

August 31, 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-2004-133 - Proposed Amendments to 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 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,

Marc Menchel
Executive Vice President
and General Counsel

Enclosures

File No. SR-NASD-2004-133
Consists of 14 Pages
August 31, 2004

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) of the Securities Exchange Act of 1934 ("Act"), the National Association of Securities Dealers, Inc. ("NASD") is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to amend NASD Rule 9522 to permit NASD's Department of Member Regulation ("Member Regulation") to approve MC-400 Applications of disqualified persons whose functions will be purely clerical and/or ministerial in nature. Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

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9500. OTHER PROCEEDINGS

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9522. Initiation of Eligibility Proceeding; Member Regulation Consideration

(a) through (e)(1) No change

(e) **(2) Matters that may be Approved by the Department of Member Regulation after the Filing of an Application**

The Department of Member Regulation, as it deems consistent with the public interest and the protection of investors, may approve an application filed by a disqualified member or sponsoring member if a disqualified member or disqualified person is subject to one or more of the following conditions but is not otherwise subject to disqualification (other than a matter set forth in subparagraph (e)(1)):

(A) through (C) No change

(D) The disqualification consists of a court order or judgment of

injunction or conviction, and such order or judgment:

(i) No change

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

(E) The disqualified person's functions are purely clerical and/or ministerial in nature.

* * * * *

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

(a) The proposed rule change was approved by the Board of Directors of NASD Regulation, Inc. at its meeting on July 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 Board of Governors of NASD had an opportunity to review the proposed rule change at its meeting on July 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 Board of Governors of NASD to adopt amendments to NASD Rules without recourse to the membership for approval.

NASD will announce the effective date of the proposed rule change in a Notice to Members to be published no later than 60 days following Commission approval. The effective date will be 30 days following publication of the Notice to Members announcing Commission

approval.

(b) Questions regarding this rule filing may be directed to Shirley H. Weiss, 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 9520 Series sets forth NASD's eligibility procedures under which persons subject to a statutory disqualification may become or remain associated with a member firm. Rule 9522 specifies when Member Regulation may approve a matter¹ and when the National Adjudicatory Council ("NAC") must consider a matter. The purpose of the proposed rule change to Rule 9522(e)(2) is to give Member Regulation the authority to approve the MC-400 Applications ("Applications") of statutorily disqualified persons who will be engaged solely in clerical and/or ministerial activities.

SEC Rule 19h-1, which prescribes the form and content of, and establishes the mechanism by which the SEC reviews, proposals submitted by NASD (and other self-regulatory organizations) to allow persons subject to statutory disqualification to become or remain associated with member firms, exempts from the filing requirement persons who are statutorily disqualified but who perform only clerical or ministerial functions.² Currently, the Rule 9520 Series requires the NAC (after a hearing and consideration by the Statutory Disqualification

¹ Member Regulation does not have the authority to deny an Application or other written request for relief. See Rule 9522(e) and Rule 9523.

² Rule 19h-1(a)(2) specifies that notices must be filed with the Commission if, among other things, a disqualified person "...controls [the] member, is a general partner or officer (or person occupying a similar status or performing a similar function) of [the] member, is an employee who, on behalf of [the] member, is engaged in securities advertising, public relations, research, sales, trading, or training or supervision of other employees who engage or propose to engage in such activities, except clerical and ministerial persons

("SD") Committee) to determine whether a statutorily disqualified person may associate with a member firm in a purely clerical and/or ministerial capacity.

NASD wishes to be able to handle these matters more expeditiously, while also retaining the necessary ability to conduct a thorough review to determine whether a disqualified person may enter or continue in the securities industry in a clerical and/or ministerial capacity.

Therefore, under the proposed rule change, the sponsoring firm would continue to be required to file an Application on behalf of the disqualified individual seeking to engage in solely clerical and/or ministerial activities. Member Regulation would have the authority under amended Rule 9522(e)(2) to approve the Application. In the event Member Regulation does not approve the Application, the sponsoring member would have the right to proceed under Rule 9524 (i.e., to have the matter decided by the NAC after a hearing and consideration by the SD Committee).³

If Member Regulation determines that the Application should be approved, but with specific supervisory requirements, the parties would have the option of proceeding under Rule 9523. Rule 9523 provides that the Chairman of the Statutory Disqualification Committee ("Chairman"), acting on behalf of the NAC, may accept a letter indicating that the sponsoring firm and Member Regulation have consented to the imposition of an agreed-upon supervisory plan. The Chairman also has the option of rejecting the plan or referring the matter to the NAC. The plan is deemed final if it is accepted by the NAC or the Chairman. If the parties cannot agree on a supervisory plan, the sponsoring member may request NAC consideration of the matter under Rule 9524.

engaged in such activities, or is an employee with access to funds, Securities or books and records,”

³ Member Regulation also retains the discretion to refer any matter to the NAC, rather than exercise its authority under Rule 9522 to review an Application or other request for relief.

As noted in Section 2 of this filing, NASD will announce the effective date of the proposed rule change in a Notice to Members to be published no later than 60 days following Commission approval. The effective date will be 30 days following publication of the Notice to Members announcing Commission approval.

(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 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 and Section 15A(B)(8) of the Act, which requires that NASD rules provide a fair procedure for the denial of membership to any person seeking membership therein. NASD believes that its proposed rule change is consistent with the provisions of the Act noted above in that it provides for a fair procedure for determining whether a statutorily disqualified person may participate in the securities industry in a clerical and/or ministerial capacity.

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

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

6. Extension of Time Period for Commission Action

NASD does not consent at this time to an extension of the time period for Commission

action specified in Section 19(b)(2) of the Act.

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

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Exhibits

1. Completed notice of proposed rule change for publication in the Federal Register.

Pursuant to the requirements of the Securities Exchange Act of 1934, NASD has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

NASD

BY: _____
Marc Menchel, Executive Vice President and General Counsel
NASD, Regulatory Policy and Oversight

Date: August 31, 2004

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-NASD-2004-133)

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Proposed Amendments to Rule 9522

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² 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 Rule 9522, to [insert description]. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

9500. OTHER PROCEEDINGS

* * * * *

9522. Initiation of Eligibility Proceeding; Member Regulation Consideration

(a) through (e)(1) No change

(e) **(2) Matters that may be Approved by the Department of Member Regulation after the Filing of an Application**

¹ 15 U.S.C. 78s(b)(1).

The Department of Member Regulation, as it deems consistent with the public interest and the protection of investors, may approve an application filed by a disqualified member or sponsoring member if a disqualified member or disqualified person is subject to one or more of the following conditions but is not otherwise subject to disqualification (other than a matter set forth in subparagraph (e)(1)):

(A) through (C) No change

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

(i) No change

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

(E) The disqualified person's functions are purely clerical and/or ministerial in nature.

* * * * *

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

1. Purpose

NASD's Rule 9520 Series sets forth NASD's eligibility procedures under which persons subject to a statutory disqualification may become or remain associated with a member firm. Rule 9522 specifies when Member Regulation may approve a matter³ and when the National Adjudicatory Council ("NAC") must consider a matter. The purpose of the proposed rule change to Rule 9522(e)(2) is to give Member Regulation the authority to approve the MC-400 Applications ("Applications") of statutorily disqualified persons who will be engaged solely in clerical and/or ministerial activities.

SEC Rule 19h-1, which prescribes the form and content of, and establishes the mechanism by which the SEC reviews, proposals submitted by NASD (and other self-regulatory organizations) to allow persons subject to statutory disqualification to become or remain associated with member firms, exempts from the filing requirement persons who are statutorily disqualified but who perform only clerical or ministerial functions.⁴ Currently, the Rule 9520 Series requires the NAC (after a hearing and consideration by the Statutory Disqualification ("SD") Committee) to determine whether a statutorily disqualified person may associate with a member firm in a purely clerical and/or ministerial capacity.

NASD wishes to be able to handle these matters more expeditiously, while also retaining

³ Member Regulation does not have the authority to deny an Application or other written request for relief. See Rule 9522(e) and Rule 9523.

⁴ Rule 19h-1(a)(2) specifies that notices must be filed with the Commission if, among other things, a disqualified person "...controls [the] member, is a general partner or officer (or person occupying a similar status or performing a similar function) of [the] member, is an employee who, on behalf of [the] member, is engaged in securities advertising, public relations, research, sales, trading, or training or supervision of other employees who engage or propose to engage in such activities, except clerical and ministerial persons engaged in such activities, or is an employee with access to funds, Securities or books and records,"

the necessary ability to conduct a thorough review to determine whether a disqualified person may enter or continue in the securities industry in a clerical and/or ministerial capacity.

Therefore, under the proposed rule change, the sponsoring firm would continue to be required to file an Application on behalf of the disqualified individual seeking to engage in solely clerical and/or ministerial activities. Member Regulation would have the authority under amended Rule 9522(e)(2) to approve the Application. In the event Member Regulation does not approve the Application, the sponsoring member would have the right to proceed under Rule 9524 (i.e., to have the matter decided by the NAC after a hearing and consideration by the SD Committee).⁵

If Member Regulation determines that the Application should be approved, but with specific supervisory requirements, the parties would have the option of proceeding under Rule 9523. Rule 9523 provides that the Chairman of the Statutory Disqualification Committee ("Chairman"), acting on behalf of the NAC, may accept a letter indicating that the sponsoring firm and Member Regulation have consented to the imposition of an agreed-upon supervisory plan. The Chairman also has the option of rejecting the plan or referring the matter to the NAC. The plan is deemed final if it is accepted by the NAC or the Chairman. If the parties cannot agree on a supervisory plan, the sponsoring member may request NAC consideration of the matter under Rule 9524.

As noted in Section 2 of this filing, NASD will announce the effective date of the proposed rule change in a Notice to Members to be published no later than 60 days following Commission approval. The effective date will be 30 days following publication of the Notice to Members announcing Commission approval.

⁵ Member Regulation also retains the discretion to refer any matter to the NAC, rather than exercise its

2. 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 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 and Section 15A(B)(8) of the Act, which requires that NASD rules provide a fair procedure for the denial of membership to any person seeking membership therein. NASD believes that its proposed rule change is consistent with the provisions of the Act noted above in that it provides for a fair procedure for determining whether a statutorily disqualified person may participate in the securities industry in a clerical and/or ministerial capacity.

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

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. DATE OF EFFECTIVENESS OF THE PROPOSED RULE CHANGE AND TIMING FOR COMMISSION ACTION

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which

authority under Rule 9522 to review an Application or other request for relief.

the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. SOLICITATION OF COMMENTS

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change [as amended] 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 also may be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR-NASD-2004-133. 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