

March 6, 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 01-13**
Amendments to the By-Law Definitions of Broker and Dealer

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,

Patrice M. Gliniecki
Vice President and
Deputy 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 amend the definitions of “broker” and “dealer” in the By-Laws of NASD Regulation to conform to the definitions of “broker” and “dealer” in the Act. Under the proposed rule change, the definitions of “broker” and “dealer” in the NASD Regulation By-Laws would incorporate by reference the definitions of these terms as set forth in Sections 3(a)(4) and 3(a)(5), respectively, of the Act. NASD Regulation is proposing to amend the definitions of “broker” and “dealer” in its By-Laws in anticipation of changes being made to the Act’s definitions of these terms pursuant to the Gramm-Leach-Bliley Act of 1999. Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

By-Laws of NASD Regulation, Inc.

ARTICLE I

Definitions

- (a) & (b) No change
- (c) "broker" shall have the same meaning as in Section 3(a)(4) of the Act; [means any individual, corporation, partnership, association, joint stock company, business trust, unincorporated organization, or other legal entity engaged in the business of effecting transactions in securities for the account of others, but does not include a bank;]

(d) & (e) No change

(f) "dealer" shall have the same meaning as in Section 3(a)(5) of the Act; [means any individual, corporation, partnership, association, joint stock company, business trust, unincorporated organization, or other legal entity engaged in the business of buying and selling securities for such individual's or entity's own account, through a broker or otherwise, but does not include a bank, or any person insofar as such person buys or sells securities for such person's own account, either individually or in some fiduciary capacity, but not as part of a regular business;]

(g) - (ff) No change

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 January 24, 2001, 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 the NASD to its Subsidiaries. The NASD Board of Governors had an opportunity to review the proposed rule change at its meeting on January 25, 2001. No other action by NASD Regulation is necessary for the filing of the proposed rule change. Section 2 of Article XIII of the NASD Regulation By-Laws permits the NASD Regulation Board of Directors to adopt amendments to NASD Regulation By-Laws 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 amend the definitions of “broker” and “dealer” in the By-Laws of NASD Regulation to conform to the definitions of “broker” and “dealer” in the Act. Under this proposal, the definitions of “broker” and “dealer” in the By-Laws will incorporate by reference the definitions of these terms as set forth in Sections 3(a)(4) and 3(a)(5), respectively, of the Act.

NASD Regulation is proposing to amend the definitions of “broker” and “dealer” in its By-Laws in anticipation of changes being made to the Act’s definitions of these terms pursuant to the Gramm-Leach-Bliley Act of 1999 (“GLBA”).¹ More specifically, Title II of the GLBA, which becomes effective on May 12, 2001, eliminates the long-standing general exception for banks from the definitions of “broker” and “dealer” in the Act. In place of the general exception for banks, the GLBA enumerates a series of exceptions from the definitions of “broker” and “dealer” for certain specified banking activities.²

The proposed rule change is necessary to ensure that the definitions of “broker” and “dealer” in the NASD Regulation By-Laws remain consistent with the definitions in the Act. Moreover, because the proposed rule change would incorporate by reference the definitions of “broker” and “dealer” as set forth in the Act, it would eliminate the need for any conforming

¹ Pub. L. No. 106-102, 113 Stat. 1338 (1999).

² See id.

amendments to the definitions of these terms in the By-Laws in the event Congress amends the Act's definitions in the future.³

(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 amendments, which conform the NASD Regulation By-Law definitions of "broker" and "dealer" with those in the Act, is consistent with those purposes.

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.

³ In approving the proposed rule change, the Board of Directors of NASD Regulation recognized that any future amendments to the Act's definitions of "broker" or "dealer" would, in effect, result in an identical change to the definitions of these terms in the NASD Regulation By-Laws, without requiring any further action by the Board.

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

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; does not impose any significant burden on competition; and does not become operative for 30 days after filing. In accordance with Rule 19b-4, NASD Regulation submitted written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing. NASD Regulation proposes to make the proposed rule change effective on May 12, 2001, or whatever date Title II of the GLBA becomes effective.

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
Deputy General Counsel

Date: March 6, 2001

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- []; File No. SR-NASD 01-13)

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASD Regulation, Inc. Relating to Amendments to the By-Law Definitions of Broker and Dealer

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)⁴ and Rule 19b-4 thereunder,⁵ notice is hereby given that on , 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. NASD Regulation has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,⁶ which renders the proposal effective upon receipt of this filing by the Commission. 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 is proposing to amend the definitions of “broker” and “dealer” in Article I of the By-Laws of NASD Regulation to conform with the recent changes to the definitions of

⁴ 15 U.S.C. 78s(b)(1).

⁵ 17 CFR 240.19b-4.

⁶ 17 CFR 240.19b-4(f)(6).

broker and dealer in the Act, as amended by the Gramm-Leach-Bliley Act of 1999 ("GLBA"). Specifically, Title II of GLBA eliminates the long-standing general exception for banks from the definitions of "broker" and "dealer" in the Act. In place of the general exception, GLBA enumerates a series of exceptions from the definitions of broker and dealer for certain banking activities. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

By-Laws of NASD Regulation, Inc.

ARTICLE I

Definitions

(a) & (b) No change

(c) "broker" shall have the same meaning as in Section 3(a)(4) of the Act; [means any individual, corporation, partnership, association, joint stock company, business trust, unincorporated organization, or other legal entity engaged in the business of effecting transactions in securities for the account of others, but does not include a bank;]

(d) & (e) No change

(f) "dealer" shall have the same meaning as in Section 3(a)(5) of the Act; [means any individual, corporation, partnership, association, joint stock company, business trust, unincorporated organization, or other legal entity engaged in the business of buying and selling securities for such individual's or entity's own account, through a broker or otherwise, but does not include a bank, or any person insofar as such person buys or sells securities for such person's own account, either individually or in some fiduciary capacity, but not as part of a regular business;]

(g) - (ff) No change

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 amend the definitions of “broker” and “dealer” in the By-Laws of NASD Regulation to conform to the definitions of “broker” and “dealer” in the Act. Under the proposal, the definitions of “broker” and “dealer” in the By-Laws will incorporate by reference the definitions of these terms as set forth in Sections 3(a)(4) and 3(a)(5), respectively, of the Act.

NASD Regulation is proposing to amend the definitions of “broker” and “dealer” in its By-Laws in anticipation of changes being made to the Act’s definitions of these terms pursuant to the Gramm-Leach-Bliley Act of 1999 (“GLBA”).⁷ More Specifically, Title II of the GLBA, which becomes effective on May 12, 2001, eliminates the long-standing general exception for banks from

⁷ Pub. L. No. 106-102, 113 Stat. 1338 (1999).

the definitions of “broker” and “dealer” in the Act. In place of the general exception, for banks, the GLBA enumerates a series of exceptions from the definitions of “broker” and “dealer” for certain specified banking activities.⁸

The proposed rule change is necessary to ensure that the definitions of “broker” and “dealer” in the NASD Regulation By-Laws remain consistent with the definitions in the Act. Moreover, because the proposed rule change would incorporate by reference the definitions of “broker” and “dealer” as set forth in the Act, it would eliminate the need for any conforming amendments to the definitions of these terms in the By-Laws in the event Congress amends the Act’s definitions in the future.⁹

(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 amendments which conform the NASD Regulation By-Law definitions of “broker” and “dealer” with those in the Act, is consistent with these purposes.

⁸ See id.

⁹ In approving the proposed rule change, the Board of Directors of NASD Regulation recognized that any future amendments to the Act’s definitions of “broker” or “dealer” would, in effect, result in an identical change to the definitions of these terms in the NASD Regulation By-Laws, without requiring any further action by the Board.

(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.¹⁰ Consequently, because the foregoing proposed rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative until May 12, 2001, or whatever date Title II of the GLBA becomes effective, more than 30 days from March 6, 2001, the date on which it was filed, and NASD Regulation provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date, it has become effective 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. 20549-0609. 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,
17 CFR 200.30-3(a)(12).

Jonathan G. Katz
Secretary