

February 20, 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-2002-27 - Proposed Rule Change to NASD Rule 3070

Dear Ms. England:

Pursuant to Section 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, 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 Acting General Counsel

Enclosures

File No. SR-NASD-2002-27
Consists of 13 Pages

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 ("Exchange Act" or "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 Rule 3070 regarding the reporting of criminal offenses of associated persons. Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * *

Rule 3070. Reporting Requirements

(a) Each member shall promptly report to the Association whenever such member or person associated with the member:

(1) through (4) No change.

(5) is indicted, or convicted of, or pleads guilty to, or pleads no contest to, [any criminal offense (other than traffic violations)] any felony; or any misdemeanor that involves the purchase or sale of any security, the taking of a false oath, the making of a false report, bribery, perjury, burglary, larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds, or securities, or substantially equivalent activity in a domestic or foreign court.

(6) through (10) No change.

(a) through (e) No change.

(b) Not applicable.

(b) 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 January 23, 2002, which authorized the filing of the rule change with the Commission. Counsel for 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 January 24, 2002. 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 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, 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 amend NASD Rule 3070(a)(5) to limit reporting under this category to any felony, certain types of misdemeanors, and substantially equivalent activity in a domestic or foreign court. This rule change would conform Rule 3070(a)(5) to a proposed amendment to New York Stock Exchange ("NYSE") Rule 351(a)(5).

Rule 3070, adopted in 1995, requires members promptly to report to the NASD the occurrence of 10 specified events (including criminal indictments and convictions, securities law violations, securities or commodities-related litigation or arbitration resulting in an award or judgment exceeding \$15,000, customer claims settled for an amount exceeding \$15,000, association with a statutorily disqualified person, and certain disciplinary proceedings) and to file quarterly statistical information concerning customer complaints. Rule 3070 assists the NASD in the timely identification and investigation of problem members, branch offices, and registered representatives that may pose heightened risks to public investors.

The reporting requirements under Rule 3070 significantly parallel comparable provisions of NYSE Rule 351 as well as the disclosure requirements of the Uniform Application for Securities Industry Registration or Transfer ("Form U-4"). In this regard, any member subject to substantially similar reporting requirements of another self-regulatory organization of which it is a member is exempt from the provisions of Rule 3070.

With respect to criminal offenses, NASD Rule 3070(a)(5) and NYSE Rule 351(a)(5) currently require members promptly to report to the NASD and NYSE, respectively, when such member or person associated with the member is indicted, convicted of, pleads guilty to, or

pleads no contest to any criminal offense other than traffic violations. This requirement is overly broad, in that it requires members and persons associated with members to report information that is not material to NASD Regulation's regulatory program. The proposed rule change would continue to require members and associated persons to report "any felony," consistent with Question 23A(1) of the Form U-4, but it would limit the scope of reportable misdemeanor criminal events to the type of business-related offenses that are required to be reported in response to Question 23B(1) of the Form U-4.¹ The proposed rule change would be consistent with a proposed rule change to NYSE Rule 351(a)(5), which would limit the reporting of criminal offenses to: any felony or any misdemeanor that involves the purchase or sale of any security, the taking of a false oath, the making of a false report, bribery, perjury, burglary, larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion or misappropriation of funds or securities, or substantially equivalent activity in a domestic or foreign court.

¹ Question 23A(1) reads as follows:

Have you ever:

- (a) been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign, or military court to any *felony*?
- (b) been *charged* with any *felony*?

Question 23B(1) reads as follows:

Have you ever:

- (a) been convicted of or pled guilty or nolo contendere ("no contest") in a domestic or foreign court to a *misdemeanor involving*: investments or an *investment-related* business, fraud, false statements or omissions, wrongful taking of property, or bribery, forgery, counterfeiting or extortion, or a conspiracy to commit any of these offenses?
- (b) been *charged* with a *misdemeanor* specified in 23(B)(1)(a)?

(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 NASD believes that the proposed rule change to Rule 3070(a)(5) is designed to accomplish these ends by conforming Rule 3070(a)(5) to a proposed rule change to NYSE Rule 351(a)(5) and making Rule 3070(a)(5) more consistent with the reporting requirements of the Form U-4.

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 rule change to NASD Rule 3070(a)(5) is consistent with a proposed rule change to NYSE Rule 351(a)(5).

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: February 20, 2002

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-NASD-2002-27)

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to an Amendment to Rule 3070

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 February 20, 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

NASD Regulation is proposing to amend NASD Conduct Rule 3070 to limit reporting under this category to any felony, certain types of misdemeanors, and substantially equivalent activity in a domestic or foreign court. This rule change would conform Rule 3070(a)(5) to a proposed amendment to New York Stock Exchange ("NYSE") Rule 351(a)(5). Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

* * *

Rule 3070. Reporting Requirements

(a) Each member shall promptly report to the Association whenever such member or person associated with the member:

(1) through (4) No change.

(5) is indicted, or convicted of, or pleads guilty to, or pleads no contest to, [any criminal offense (other than traffic violations)] any felony; or any misdemeanor that involves the purchase or sale of any security, the taking of a false oath, the making of a false report, bribery, perjury, burglary, larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds, or securities, or substantially equivalent activity in a domestic or foreign court.

(6) through (10) No change.

(a) through (e) 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

(a) Purpose

The purpose of the proposed rule change is to amend NASD Rule 3070(a)(5) to limit reporting under this category to any felony, certain types of misdemeanors, and substantially equivalent activity in a domestic or foreign court. This rule change would conform Rule 3070(a)(5) to a proposed amendment to New York Stock Exchange ("NYSE") Rule 351(a)(5).

Rule 3070, adopted in 1995, requires members promptly to report to the NASD the occurrence of 10 specified events (including criminal indictments and convictions, securities law violations, securities or commodities-related litigation or arbitration resulting in an award or judgment exceeding \$15,000, customer claims settled for an amount exceeding \$15,000, association with a statutorily disqualified person, and certain disciplinary proceedings) and to file quarterly statistical information concerning customer complaints. Rule 3070 assists the NASD in the timely identification and investigation of problem members, branch offices, and registered representatives that may pose heightened risks to public investors.

The reporting requirements under Rule 3070 significantly parallel comparable provisions of NYSE Rule 351 as well as the disclosure requirements of the Uniform Application for Securities Industry Registration or Transfer ("Form U-4"). In this regard, any member subject to substantially similar reporting requirements of another self-regulatory organization of which it is a member is exempt from the provisions of Rule 3070.

With respect to criminal offenses, NASD Rule 3070(a)(5) and NYSE Rule 351(a)(5) currently require members promptly to report to the NASD and NYSE, respectively, when such member or person associated with the member is indicted, convicted of, pleads guilty to, or

pleads no contest to any criminal offense other than traffic violations. This requirement is overly broad, in that it requires members and persons associated with members to report information that is not material to NASD Regulation's regulatory program. The proposed rule change would continue to require members and associated persons to report "any felony," consistent with Question 23A(1) of the Form U-4, but it would limit the scope of reportable misdemeanor criminal events to the type of business-related offenses that are required to be reported in response to Question 23B(1) of the Form U-4.³ The proposed rule change would be consistent with a proposed rule change to NYSE Rule 351(a)(5), which would limit the reporting of criminal offenses to: any felony or any misdemeanor that involves the purchase or sale of any security, the taking of a false oath, the making of a false report, bribery, perjury, burglary, larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion or misappropriation of funds or securities, or substantially equivalent activity in a domestic or foreign court.

³ Question 23A(1) reads as follows:

Have you ever:

- (a) been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign, or military court to any *felony*?
- (b) been *charged* with any *felony*?

Question 23B(1) reads as follows:

Have you ever:

- (a) been convicted of or pled guilty or nolo contendere ("no contest") in a domestic or foreign court to a *misdemeanor involving*: investments or an *investment-related* business, fraud, false statements or omissions, wrongful taking of property, or bribery, forgery, counterfeiting or extortion, or a conspiracy to commit any of these offenses?
- (b) been *charged* with a *misdemeanor* specified in 23(B)(1)(a)?

(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 NASD believes that the proposed rule change to Rule 3070(a)(5) is designed to accomplish these ends by conforming Rule 3070(a)(5) to a proposed rule change to NYSE Rule 351(a)(5) and making Rule 3070(a)(5) more consistent with the reporting requirements of the Form U-4.

(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

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 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. 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, 17 CFR 200.30-3(a)(12).

Jonathan G. Katz
Secretary