

February 15, 2002

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-2002-24**– Anti-Money Laundering Compliance Programs

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 Grace Yeh, Assistant General Counsel, Office of General Counsel, NASD Regulation, Inc., at (202) 728-6939; e-mail grace.yeh@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

cc: Joseph Morra

File No. SR-NASD-2002-24
Consists of 17 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 (“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 adopt new Rule 3011. As further discussed below, the USA PATRIOT Act requires financial institutions, including broker/dealers, by April 24, 2002, to establish and implement anti-money laundering compliance programs designed to ensure ongoing compliance with the requirements of the Bank Secrecy Act and the regulations promulgated thereunder. The proposed rule change prescribes the minimum standards required for each member firm’s anti-money laundering program. Below is the text of the proposed rule change. Proposed new language is underlined.

3011. Anti-Money Laundering Compliance Program

On or before April 24, 2002, each member shall develop and implement a written anti-money laundering program reasonably designed to achieve and monitor the member’s compliance with the requirements of the Bank Secrecy Act (31 U.S.C. 5311, *et seq.*), and the implementing regulations promulgated thereunder by the Department of the Treasury. Each member organization’s anti-money laundering program must be approved, in writing, by a member of senior management. The anti-money laundering programs required by this Rule shall, at a minimum,

(a) Establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of transactions required under 31 U.S.C. 5318(g) and the implementing regulations thereunder;

(b) Establish and implement policies, procedures, and internal controls reasonably designed to achieve compliance with the Bank Secrecy Act and the implementing regulations thereunder;

(c) Provide for independent testing for compliance to be conducted by member personnel or by a qualified outside party;

(d) Designate an individual or individuals responsible for implementing and monitoring the day-to-day operations and internal controls of the program; and

(e) Provide ongoing training for appropriate personnel.

* * * *

(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 January 23, 2002, 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 the 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 NASD Rules without recourse to the membership for approval.

Following Commission approval, the implementation date of the proposed rule change will be April 24, 2002.

(b) Questions regarding this rule filing may be directed to Grace Yeh, Assistant General Counsel, NASD Regulation, Office of General Counsel, at (202) 728-6939.

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

Introduction

The purpose of the proposed rule change is to establish minimum standards for the anti-money laundering programs that broker/dealers are required to develop and implement under Section 352 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (“USA PATRIOT Act”).¹ The USA PATRIOT Act, which was signed into law by President Bush on October 26, 2001, is designed to deter and punish terrorists in the United States and abroad and to enhance law enforcement investigating tools by prescribing, among other things, new surveillance procedures, new immigration laws, and new and more stringent anti-money laundering laws.

¹ Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001).

Title III of the USA PATRIOT Act, referred to as the International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001 (“Money Laundering Act”), focuses on strengthening the anti-money laundering provisions put into place by earlier legislation, particularly with respect to crimes by foreign nationals and foreign financial institutions. The Money Laundering Act imposes certain obligations on broker/dealers through new anti-money laundering provisions and amendments to the Bank Secrecy Act (“BSA”).² Among other things, broker/dealers will have to implement anti-money laundering programs (as described below), prepare and file suspicious activity reports, and follow new know-your-customer procedures. Broker/dealers will be required to comply with these new obligations in addition to continuing to comply with existing BSA reporting and record-keeping requirements.³

Anti-Money Laundering Programs

Section 352 of the Money Laundering Act requires all financial institutions, including broker/dealers, to develop and implement anti-money laundering compliance programs on or before April 24, 2002. Section 352 requires the compliance programs, at a minimum, to establish (1) the development of internal policies, procedures and controls, (2) the designation of a compliance officer with responsibility for a firm’s anti-money laundering program, (3) an ongoing employee training program, and (4) an independent audit function to test the effectiveness of the anti-money laundering compliance program. Section 352 further

² 31 U.S.C. 5311, *et seq.*

³ Rule 17a-8 under the Exchange Act (17 C.F.R. 240.17a-8) requires broker/dealers to comply with the recordkeeping and reporting requirements of the BSA and related regulations, including the obligation to file reports and make and preserve records in connection with certain transaction generally exceeding \$10,000 and involving currency or the physical transport of currency into or out of the United States.

allows the Secretary of the Department of Treasury, at its discretion, to establish minimum standards for the anti-money laundering programs.

The legislative history of the USA Patriot Act explains that the requirement to have an anti-money laundering compliance program is not a “one-size-fits-all” requirement. The general nature of the requirements reflects Congress’ intent that each financial institution should have the flexibility to tailor the anti-money laundering programs to fit its business, taking into account factors such as size, location, activities of the firm’s business and the risks or vulnerabilities to money laundering in the firm. This flexibility is designed to ensure that all entities covered by the statute, from the very large financial institutions to the small firms, have in place policies and procedures to monitor for anti-money laundering compliance.⁴

The proposed rule change, consistent with Section 352, would require member firms to implement anti-money laundering programs and would set forth minimum standards for such programs. The standards established by the proposed rule change are substantially equivalent to those found in the existing bank anti-money laundering program rules.⁵ Consistent with the USA PATRIOT Act, the proposed rule change would require firms to develop and implement a written anti-money laundering compliance program by April 24, 2002. The program would need to be approved in writing by a member of senior management and be reasonably designed to achieve and monitor the member’s ongoing

⁴ See *USA Patriot Act of 2001: Consideration of H.R. 3162 Before the Senate* (October 25, 2001) (statement of Sen. Sarbanes); *Financial Anti-Terrorism Act of 2001: Consideration Under Suspension of Rules of H.R. 3004 Before the House of Representatives* (October 17, 2001) (statement of Rep. Kelly) (provisions of the Financial Anti-Terrorism Act of 2001 were incorporated as Title III in the USA PATRIOT Act.)

⁵ See e.g., 12 C.F.R. 208.63.

compliance with the requirements of the BSA and the implementing regulations promulgated thereunder. The proposed rule change would require firms, at a minimum, to (1) establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of suspicious transactions; (2) establish and implement policies, procedures, and internal controls reasonably designed to assure compliance with the BSA and implementing regulations; (3) provide for independent testing for compliance to be conducted by member personnel or by a qualified outside party; (4) designate an individual or individuals responsible for implementing and monitoring the day-to-day operations and internal controls of the program; and (5) provide ongoing training for appropriate personnel.

Prior to the implementation of the proposed rule change, NASD Regulation anticipates providing guidance in a *Notice to Members* to assist member firms in developing an anti-money laundering program that fits their business model and needs.⁶

(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 is designed to accomplish these ends by establishing the minimum requirements for anti-money laundering compliance programs of member firms. These programs are designed to help

⁶ On February 12, 2002, the Securities Industry Association Anti-Money Laundering Committee released a *Preliminary Guidance For Deterring Money Laundering Activity*. In general, the guidance discusses key elements for a broker/dealer to consider in developing an effective anti-money laundering program.

identify and prevent money laundering abuses that can affect the integrity of the U.S. capital markets.

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

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: February 15, 2002

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-NASD-2002-24)

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Anti-Money Laundering Compliance Programs

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”), 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 add new Rule 3011 of the National Association of Securities Dealers, Inc. (“NASD” or “Association”). As further discussed below, the USA PATRIOT Act requires financial institutions, including broker/dealers, by April 24, 2002, to establish and implement anti-money laundering compliance programs designed to ensure ongoing compliance with the requirements of the Bank Secrecy Act and the regulations

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

promulgated thereunder. The proposed rule change prescribes the minimum standards required for each member firm's anti-money laundering program. Below is the text of the proposed rule change. Proposed new language is in italics.

3011. Anti-Money Laundering Compliance Program

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(c) Provide for independent testing for compliance to be conducted by member personnel or by a qualified outside party;

(d) Designate an individual or individuals responsible for implementing and monitoring the day-to-day operations and internal controls of the program; and

(e) Provide ongoing training for appropriate personnel.

* * * *

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**

Introduction

The purpose of the proposed rule change is to establish minimum standards for the anti-money laundering programs that broker/dealers are required to develop and implement under Section 352 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (“USA PATRIOT Act”).³ The USA PATRIOT Act, which was signed into law by President Bush on October 26, 2001, is designed to deter and punish terrorists in the United States and abroad and to enhance law enforcement investigating tools by prescribing, among other things, new surveillance procedures, new immigration laws, and new and more stringent anti-money laundering laws.

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identify and prevent money laundering abuses that can affect the integrity of the U.S. capital markets.

(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