

Barbara Z. Sweeney
Senior Vice President and
Corporate Secretary

January 8, 2004

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-2004-003 – To Establish Effective Date For Recently Amended Provisions of NASD Rule 2711(h)(2)

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 Philip A. Shaikun, Office of General Counsel, Division of Regulatory Policy and Oversight, NASD, Inc. at (202) 728-8451; e-mail philip.shaikun@nasd.com. The fax number of the Office of General Counsel is (202) 728-8264.

Very truly yours,

Barbara Z. Sweeney
Senior Vice President and
Corporate Secretary

Enclosures

File No. SR-NASD-2004-003
Consists of Pages 12
January 8, 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 (“Exchange Act” or “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 establish April 26, 2004 as the effective date for the recently amended provisions of NASD Rule 2711(h)(2) that require certain disclosures by members and research analysts of compensation received by the member or its affiliates from the subject company of a research report or public appearance.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

(a) The Board of Directors of NASD Regulation, Inc. approved the proposed rule change at its meeting on September 25, 2002, and 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 NASD Board of Governors had the opportunity to review proposed rule change at its meeting on September 26, 2002. No other action by the NASD is necessary for the filing of the proposed rule change.

(b) Questions regarding this rule filing may be directed to Philip A. Shaikun, Associate General Counsel, Office of General Counsel, Division of Regulatory Policy and Oversight, NASD, at (202) 728-8451.

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

(a) Purpose

NASD is filing the proposed rule change to establish April 26, 2004 as the effective date for the recently amended provisions of NASD Rule 2711(h)(2) that require disclosure of compensation received by the member and its affiliates from the subject company of a research report or public appearance. The SEC approved these amendments to Rule 2711 on July 29, 2003 as part of a proposal that augmented research analyst conflict of interest rules generally and imposed registration and continuing education requirements on research analysts.¹

Generally, the amendments to Rule 2711(h)(2) require a member to disclose in a research report (1) non-investment banking compensation received by it or its affiliates from a subject company in the past 12 months and (2) if a subject company is, or during the past 12-month period, was a client of the member and types of client services provided to the subject company. The amendments further require a research analyst to disclose in a public appearance (1) if, to the extent the analyst knows or has reason to know, the member or an affiliate received any compensation in the past 12 months, (2) if the research analyst received any compensation from the subject company in the past 12 months, and (3) if, to the extent the analyst knows or has reason to know, a subject company is, or during the past 12-months period, was a client of the member and types of client services provided to the subject company. These provisions supplement requirements in Rule 2711(h)(2) that require disclosure of investment banking compensation received or sought by a member from a subject company and any compensation

¹ Exchange Release No. 48252, 68 FR 45875 (August 4, 2003).

received by a research analyst that is based upon a member's investment banking services revenues.

The Commission's approval order established a January 26, 2004 effective date for the new compensation disclosure provisions, but also provided that NASD may grant an additional 90 days to comply as it deems necessary on a case-by-case basis.² Thus, the approval order recognized that additional time might be necessary for some or all members to put systems in place to track various types of compensation and client relationships required to be disclosed under the new provisions.

NASD received several requests from members to extend the implementation date of these provisions due to the scope and difficulty required to implement the technology, systems and other changes needed to achieve compliance with the non-investment banking compensation and client disclosure provisions. Members noted the rule requirements necessitate that they build and test new systems and technology feeds to aggregate data across a wide range of business lines within the members. Moreover, in many instances, members must extend that technological infrastructure to global affiliates. In additions, members noted that the timing of the implementation date overlaps with year-end technology "freezes" that many firms impose to ensure that systems changes do not impact the accuracy of year-end information gathering related to financial reporting and taxes.

NASD believes these members have demonstrated good cause for an extension of the effective date for the applicable provisions. Moreover, NASD believes the problems cited by the

² Since the 90th day after the current effective date is a Sunday (April 25, 2004), the proposed rule change would establish the compliance date as the following Monday, April 26, 2004.

requesting members are common within the industry and that there should be a uniform effective date for all members. Therefore, NASD is establishing April 26, 2004 as the effective date for the new provisions of Rule 2711(h)(2) for all members. NASD notes that all existing provisions under Rule 2711(h)(2) remain in effect and are not subject to the new effective date.

(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. NASD believes that this proposed rule change will further investor protection by giving members adequate time to establish systems that can effectively track information that will reduce or expose conflicts of interest and thereby significantly curtail the potential for fraudulent and manipulative acts.

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

Not applicable.

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)(1) of Rule 19b-4 thereunder, in that the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule, NASD Rule 2711, previously approved by the SEC. The sole purpose of the rule change is to establish an effective date for provisions of a rule previously approved.

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

The New York Stock Exchange is expected to file with the Commission, on or around the filing date of this proposed rule change, a similar proposed rule change to establish the same effective date for the parallel provisions in its rules.

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: _____
Barbara Z. Sweeney
Senior Vice President and Corporate Secretary

Date: January 8, 2004

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-

; File No. SR-NASD-2004-003)

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. To Establish An Effective Date for Recently Amended Provisions of NASD Rule 2711(h)(2)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act” or “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. NASD has designated the proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule series under paragraph (f)(1) of Rule 19b-4 under the Act,³ 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

Pursuant to the provisions of Section 19(b)(1) of the Exchange Act, NASD is filing with the SEC a proposed rule change to establish April 26, 2004 as the effective date for the recently

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR § 240.19b-4(f)(1).

amended provisions of NASD Rule 2711(h)(2) that require certain disclosures by members and research analysts of compensation received by the member or its affiliates from the subject company of a research report or public appearance.

II. SELF-REGULATORY ORGANIZATION'S STATEMENT OF THE PURPOSE OF, AND STATUTORY BASIS FOR, THE PROPOSED RULE CHANGE

In its original rule 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

(a) Purpose

NASD is filing the proposed rule change to establish April 26, 2004 as the effective date for the recently amended provisions of NASD Rule 2711(h)(2) that require disclosure of compensation received by the member and its affiliates from the subject company of a research report or public appearance. The SEC approved these amendments to Rule 2711 on July 29, 2003 as part of a proposal that augmented research analyst conflict of interest rules generally and imposed registration and continuing education requirements on research analysts.⁴

Generally, the amendments to Rule 2711(h)(2) require a member to disclose in a research report (1) non-investment banking compensation received by it or its affiliates from a subject company in the past 12 months and (2) if a subject company is, or during the past 12-month

⁴ Exchange Release No. 48252, 68 FR 45875 (August 4, 2003).

period, was a client of the member and types of client services provided to the subject company. The amendments further require a research analyst to disclose in a public appearance (1) if, to the extent the analyst knows or has reason to know, the member or an affiliate received any compensation in the past 12 months, (2) if the research analyst received any compensation from the subject company in the past 12 months, and (3) if, to the extent the analyst knows or has reason to know, a subject company is, or during the past 12-months period, was a client of the member and types of client services provided to the subject company. These provisions supplement requirements in Rule 2711(h)(2) that require disclosure of investment banking compensation received or sought by a member from a subject company and any compensation received by a research analyst that is based upon a member's investment banking services revenues.

The Commission's approval order established a January 26, 2004 effective date for the new compensation disclosure provisions, but also provided that NASD may grant an additional 90 days to comply as it deems necessary on a case-by-case basis.⁵ Thus, the approval order recognized that additional time might be necessary for some or all members to put systems in place to track various types of compensation and client relationships required to be disclosed under the new provisions.

NASD received several requests from members to extend the implementation date of these provisions due to the scope and difficulty required to implement the technology, systems and other changes needed to achieve compliance with the non-investment banking compensation and

⁵ Since the 90th day after the current effective date is a Sunday (April 25, 2004), the proposed rule change would establish the compliance date as the following Monday, April 26, 2004.

client disclosure provisions. Members noted the rule requirements necessitate that they build and test new systems and technology feeds to aggregate data across a wide range of business lines within the members. Moreover, in many instances, members must extend that technological infrastructure to global affiliates. In additions, members noted that the timing of the implementation date overlaps with year-end technology “freezes” that many firms impose to ensure that systems changes do not impact the accuracy of year-end information gathering related to financial reporting and taxes.

NASD believes these members have demonstrated good cause for an extension of the effective date for the applicable provisions. Moreover, NASD believes the problems cited by the requesting members are common within the industry and that there should be a uniform effective date for all members. Therefore, NASD is establishing April 26, 2004 as the effective date for the new provisions of Rule 2711(h)(2) for all members. NASD notes that all existing provisions under Rule 2711(h)(2) remain in effect and are not subject to the new effective date.

(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. NASD believes that this proposed rule change will further investor protection by giving members adequate time to establish systems that can effectively track information that will reduce or expose conflicts of interest and thereby significantly curtail the potential for fraudulent and manipulative acts.

(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

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 NASD as a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule series under Rule 19b-4(f)(1) under the Act.⁶ Consequently, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(1) 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.

Comments may also be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR-NASD-2004-003. This file

⁶ 17 CFR § 240.19b-4(f)(1).

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 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).

Margaret H. McFarland
Deputy Secretary