

December 4, 1998

Katherine A. England
Assistant Director
Division of Market Regulation
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549
Mail Stop 10-1

Re: **File No. SR-NASD-98-90** - Proposed amendments to the Code of Procedure to provide for the Office of Disciplinary Affairs of NASD Regulation, Inc. to authorize all enforcement actions.

Dear Ms. England:

Pursuant to Rule 19b-4, enclosed herewith is 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 Eric Moss, Office of General Counsel, NASD Regulation, Inc., at (202) 728-8982; e-mail mosse@nasd.com. The fax number of the Office of General Counsel is (202) 728-8264.

Very truly yours,

Joan C. Conley
Secretary

Attachment

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”), NASD Regulation, Inc. (“NASD Regulation”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to amend Rules 9120 and 9211 of the National Association of Securities Dealers, Inc. (“NASD” or “Association”) to provide for the Office of Disciplinary Affairs of NASD Regulation to authorize all disciplinary actions. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * *

9120. Definitions

(a) through (d)

No change.

(e) "Department of Enforcement"

The term "Department of Enforcement" means the Department of Enforcement or its delegatee, the Department of Market Regulation[, except that the term excludes the Department of Market Regulation with respect to the actions of:

- (1) authorizing a complaint under Rule 9211;
- (2) determining the terms of a letter of acceptance, waiver, and consent or the terms of a minor rule violation plan letter under Rule 9216;
- (3) determining whether to contest an offer of settlement under Rule 9270; and
- (4) authorizing the filing of an appeal under Rule 9311].

(f) through (u)

No change.

(v) “Office of Disciplinary Affairs”

The term “Office of Disciplinary Affairs” means the Office of Disciplinary Affairs for NASD Regulation.

(w) [v] "Panelist"

The term "Panelist," as used in the Rule 9200 Series, means a member of a Hearing Panel or Extended Hearing Panel who is not a Hearing Officer. As used in the Rule 9300 Series, the term means a current member of the National Adjudicatory Council, a former Director or a former Governor who is appointed to serve on a Subcommittee or an Extended Proceeding Committee.

(x) [w] "Party"

With respect to a particular proceeding, the term "Party" means:

(1) in the Rule 9200 Series and the Rule 9300 Series, the Department of Enforcement or a Respondent;

(2) in the Rule 9410 Series and the Rule 9520 Series, the Department of Member Regulation or

(A) a member that is the subject of a notice under Rule 9412;

(B) a member that is the subject of a notice or files an application under Rule 9522;

(3) in the Rule 9510 Series, the department or office designated under Rule 9514(b) or a member or person that is the subject of a notice under Rule 9512 or Rule 9513; or

(4) in the Rule 9600 Series, the department or office designated under Rule 9620 to issue the decision granting or denying an exemption or a member that seeks the exemption under Rule 9610.

(y) [x] "Primary District Committee"

The term "Primary District Committee" means, in a disciplinary proceeding under the Rule 9200 Series, the District Committee designated by the Chief Hearing Officer pursuant to Rule 9232 to provide one or more of the Panelists to a Hearing Panel or, if applicable, to an Extended Hearing Panel, for such disciplinary proceeding.

(z) [y] "Respondent"

The term "Respondent" means, in a disciplinary proceeding governed by the Rule 9200 Series and in an appeal or review governed by the Rule 9300 Series, an NASD member or associated person against whom a complaint is issued.

(aa) [z] "Review Subcommittee"

The term "Review Subcommittee" means a body appointed by the National Adjudicatory Council pursuant to Article V of the NASD Regulation By-Laws.

(bb) [aa] "Statutory Disqualification Committee"

The term "Statutory Disqualification Committee" means a Subcommittee of the National Adjudicatory Council that makes a recommended decision to grant or deny an application for relief from the eligibility requirements of the Association to the National Adjudicatory Council pursuant to the Rule 9520 Series.

(cc) [bb] "Subcommittee"

The term "Subcommittee" means an Adjudicator that is:

(1) constituted under Rule 9331(a) to participate in the National Adjudicatory Council's consideration of an appeal or a review of a disciplinary proceeding pursuant to the Rule 9300 Series;

(2) constituted under the Rule 9410 Series or Rule 9630 to conduct a review proceeding.

* * * *

9200. DISCIPLINARY PROCEEDINGS

9210. Complaint and Answer

9211. Issuance of Complaint

(a) Complaint

(1) If the Department of Enforcement believes that any NASD member or associated person is violating or has violated any rule, regulation, or statutory provision, including the federal securities laws and the regulations thereunder, which the Association has jurisdiction to enforce, the Department of Enforcement may *request authorization from the Office of Disciplinary Affairs to issue* a complaint.

(2) The NASD Regulation Board and the NASD Board each shall have the authority to direct the *Office of Disciplinary Affairs* [Department of Enforcement] to authorize and *the Department of Enforcement to issue* a complaint when, on the basis of information and belief, either of such boards is of the opinion that any NASD member or associated person is violating or has violated any rule, regulation, or statutory provision, including the federal securities laws and the regulations thereunder, which the Association has jurisdiction to enforce.

(b) No change.

* * * *

(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 December 3, 1998. The Nasdaq Stock Market has 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 Subsidiaries. However, final action of the NASD will not occur until the Board of Governors of the NASD reviews, calls for review, or declines to call for review the proposed rule change. This rule filing will be amended when that final action occurs. Section 1(a)(2) of Article VI of the NASD By-Laws permits the NASD Board of Governors to adopt NASD Rules without recourse to the membership for approval. Contingent upon Commission approval, the effective date of the proposed rule change will be January 1, 1999.

(b) Questions regarding this rule filing may be directed to Eric Moss, Assistant General Counsel, NASD Regulation, Office of General Counsel, at (202) 728-8982.

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

(a) **Purpose**

Currently, the Case Authorization Unit ("CAU"), located in the Department of Enforcement ("Enforcement") of NASD Regulation, authorizes all disciplinary actions. The Office of Disciplinary Policy ("ODP"), which reports to the Office of the President of NASD

Regulation, is the primary reviewer of cases developed in the Washington, D.C. office and those involving “quality-of-market” issues. ODP also reviews and comments on all cases involving policy issues. The NASD is proposing amendments to the Code of Procedure (“Code”) that would provide for ODP to authorize all disciplinary actions. ODP would be renamed Office of Disciplinary Affairs (“ODA”) to reflect its additional role as a case authorizer.

Under the existing structure, CAU and ODP have coordinated efforts, minimized areas of potential duplication and worked well together during the first year of staff authorization of cases. There is, however, an overlap of functions between these two offices. To increase overall operating efficiency and to maintain the consistency and independence of the case authorization function, we are proposing to place the functions performed by ODP and CAU in one office. Under the proposed rule changes, all cases would be authorized by ODA, reviewing the legal, policy and consistency issues presented by each case.

(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 is consistent with Sections 15A(b)(7) and (8) of the Act, which mandate that the Association maintains a fair disciplinary process. The proposed rule change would provide for the same review of all Enforcement cases—whether developed in the districts or the Washington office.

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

NASD Regulation does not believe that the proposed rule change would 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)

NASD Regulation requests the Commission to find good cause pursuant to Section 19(b)(2) for approving the proposed rule change prior to the 30th day after its publication in the Federal Register. Such an accelerated approval is necessary to facilitate the orderly transfer of functions to the ODA, effective January 1, 1999. NASD Regulation requests that the Commission adopt the rule change fifteen days after its publication in the Federal Register.

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

Not applicable.

9. Exhibits

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: _____
Joan C. Conley, Secretary

Date: December 4, 1998

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

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Proposed Amendments to the Code of Procedure to Provide for the Office of Disciplinary Affairs of NASD Regulation, Inc. to Authorize all Enforcement Actions

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”), 15 U.S.C. 78s(b)(1), 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. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

I. SELF-REGULATORY ORGANIZATION'S STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

NASD Regulation is proposing to amend Rules 9120 and 9211 of the Code of Procedure of the National Association of Securities Dealers, Inc. (“NASD” or “Association”), to provide for the Office of Disciplinary Affairs of NASD Regulation to authorize all disciplinary actions. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

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(2) The NASD Regulation Board and the NASD Board each shall have the authority to direct the *Office of Disciplinary Affairs* [Department of Enforcement] to authorize and *the Department of Enforcement to issue a complaint when, on the basis of information and belief, either of such boards is of the opinion that any NASD member or associated person is violating or has violated any rule, regulation, or statutory provision, including the federal securities laws and the regulations thereunder, which the Association has jurisdiction to enforce.*

(b) 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

Currently, the Case Authorization Unit (“CAU”), located in the Department of Enforcement (“Enforcement”) of NASD Regulation, authorizes all disciplinary actions. The Office of Disciplinary Policy (“ODP”), which reports to the Office of the President of NASD Regulation, is the primary reviewer of cases developed in the Washington, D.C. office and those involving “quality-of-market” issues. ODP also reviews and comments on all cases involving policy issues. The NASD is proposing amendments to the Code of Procedure (“Code”) that would provide for ODP to authorize all disciplinary actions. ODP would be renamed Office of Disciplinary Affairs (“ODA”) to reflect its additional role as a case authorizer.

Under the existing structure, CAU and ODP have coordinated efforts, minimized areas of potential duplication and worked well together during the first year of staff authorization of cases. There is, however, an overlap of functions between these two offices. To increase overall operating efficiency and to maintain the consistency and independence of the case authorization function, we are proposing to place the functions performed by ODP and CAU in one office. Under the proposed rule changes, all cases would be authorized by ODA, reviewing the legal, policy and consistency issues presented by each case.

(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 is consistent with Sections 15A(b)(7) and (8) of the Act, which mandate that the Association maintains a fair disciplinary process. The proposed rule change would provide for the same review of all Enforcement cases—whether developed in the districts or the Washington office.

(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

NASD Regulation has requested that the Commission find good cause pursuant to Section 19(b)(2) for approving the proposed rule change prior to the 30th day after publication in the Federal Register. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of Section 15A and the rules and regulations thereunder. The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in that accelerated approval facilitates the orderly transfer of functions to the Office of Disciplinary Affairs.

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].

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Jonathan G. Katz
Secretary