



Corporate Financing Department
NASD Regulation, Inc.
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October 28, 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/Room 10507

Re: **File No. SR-NASD-98-81**
Proposed Exception From the Corporate Financing Rule for
Offerings by Charitable Organizations

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 Suzanne E. Rothwell, Chief Counsel, Corporate Financing, NASD Regulation, Inc., at (202) 974-2747; e-mail rothwels@nasd.com. The fax number of the Corporate Financing Department is (202) 974-2732.

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

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") a proposed rule change to Rule 2710 of the National Association of Securities Dealers, Inc. ("NASD" or "Association") to exempt offerings of charitable organizations from the filing requirements of that rule. Proposed new language is underlined; proposed deletions are in brackets.

2710. Corporate Financing Rule - Underwriting Terms and Arrangements

(a) No change.

(b) Filing Requirements

(1) - (6) No change.

(7) Offerings Exempt from Filing

Notwithstanding the provisions of subparagraph (1) above, documents and information related to the following public offerings need not be filed with the Association for review, unless subject to the provisions of Rule 2720. However, it shall be deemed a violation of this Rule or Rule 2810, for a member to participate in any way in such public offerings if the underwriting or other arrangements in connection with the offering are not in compliance with this Rule or Rule 2810, as applicable:

(A) - (C) No change.

(D) securities offered pursuant to a redemption standby "firm commitment" underwriting arrangement registered with the Commission on Forms S-3, F-3 or F-10

(only with respect to Canadian issuers); [and]

(E) financing instrument-backed securities which are rated by a nationally recognized statistical rating organization in one of its four (4) highest generic rating categories; and

(F) offerings of securities by a church or other charitable institution that is exempt from SEC registration pursuant to Section 3(a)(4) of the Securities Act.

(8) No change.

(9) Offerings Required to be Filed

Documents and information relating to all other public offerings including, but not limited to, the following must be filed with the Association for review:

(A) - (E) No change.

(F) securities offered by a bank, savings and loan association, [church or other charitable institution,] or common carrier even though such offering may be exempt from registration with the Commission;

(G) - (H) No change.

* * *

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by the Board of Directors of NASD Regulation at its meeting on April 30, 1998, which authorized the filing of the rule change with the SEC. 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 the NASD to its Subsidiaries. The NASD Board of Governors had an

opportunity to review the proposed rule change at its meeting on May 7, 1998. No other action by the NASD is necessary for the filing of the proposed rule change. Section 1(a)(2) of Article VI of the By-Laws permits the NASD Board of Governors to adopt amendments to NASD Rules without recourse to the membership for approval

Questions regarding this rule filing may be directed to Suzanne E. Rothwell, Chief Counsel, Corporate Financing, at (202) 974-2747.

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

(a) When the Act was amended in the early 1980s to require that most SEC-registered broker/dealers be members of the NASD, the NASD regulated for the first time broker/dealers that assist churches and other non-profit charitable organizations that raise money through the issuance of securities, generally public offerings of “church bonds.” Church bond and similar offerings by religious and charitable organizations are exempt from SEC registration under Section 3(a)(4) of the Securities Act of 1933 (“Securities Act”), but generally are subject to review by state regulatory authorities. NASD Rule 2710 (the “Corporate Financing Rule”) subjects “church bond” offerings to filing with the Corporate Financing Department of NASD Regulation (“Department”) so that the Department has an opportunity to determine whether compensation terms and arrangements are fair and reasonable for purposes of the rule.

Department staff have found that the aggregate underwriting compensation received by church bond broker/dealers has been significantly below the maximum amount of underwriting compensation that is permitted under Rule 2710. Although initially there was an

issue in some cases of appropriate compliance with the SEC Rule 15c2-4,¹ the staff has not recently identified any problems in this area.

In order to more appropriately focus the review efforts of Department staff on the types of offerings that present significant regulatory issues, NASD Regulation proposes to amend the Corporate Financing Rule to exempt bond offerings from the filing requirements, but not the substantive requirements, of the Corporate Financing Rule.

NASD Regulation proposes to implement the proposed rule change on the date of SEC approval.

(b) NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which require, 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 elimination of the requirement in Rule 2710 to file church bond offerings will allow NASD Regulation to better allocate its Department staff resources.

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.

¹ SEC Rule 15c2-4, adopted under the Act, requires that investor funds forwarded to a broker/dealer in a contingent offering be held in an escrow or special account, depending on whether the broker/dealer can carry customer funds or accounts, until the contingency is reached before the funds can be released to the issuer.

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. The proposed rule change will eliminate the filing requirement of the Corporate Financing Rule applicable to public offerings exempt from SEC registration under Section 3(a)(4) of the Securities Act in which an NASD member participates, as such offerings do not present regulatory issues that warrant pre-offering review of underwriting terms and arrangements under Rule 2710, the NASD's Corporate Financing Rule. The elimination of the church bond offering filing requirement will allow NASD Regulation to better allocate its Department staff.

Because NASD Regulation believes that it is in the public interest to eliminate the requirement under Rule 2710 to file church bond offerings and this rule change eliminates an unwarranted filing burden on members, NASD Regulation requests the Commission to accelerate the effectiveness of the proposed rule change prior to the 30th day 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

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: _____
Joan C. Conley, Secretary

Date: October 28, 1998

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-NASD-98-81)

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Application of the Corporate Financing Rule to Offerings by Charitable Organizations

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 , 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 Rule 2710 of the National Association of Securities Dealers, Inc. ("NASD" or "Association"), to exempt offerings by charitable organizations from the pre-offering review requirements of The Corporate Financing Rule. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

2710. Corporate Financing Rule - Underwriting Terms and Arrangements

(a) No change.

(b) Filing Requirements

(1) - (6) No change.

(7) Offerings Exempt from Filing

Notwithstanding the provisions of subparagraph (1) above, documents and information related to the following public offerings need not be filed with the Association for review, unless subject to the provisions of Rule 2720. However, it shall be deemed a violation of this Rule or Rule 2810, for a member to participate in any way in such public offerings if the underwriting or other arrangements in connection with the offering are not in compliance with this Rule or Rule 2810, as applicable:

(A) - (C) No change.

(D) securities offered pursuant to a redemption standby “firm commitment” underwriting arrangement registered with the Commission on Forms S-3, F-3 or F-10 (only with respect to Canadian issuers); [and]

(E) financing instrument-backed securities which are rated by a nationally recognized statistical rating organization in one of its four (4) highest generic rating categories; and

(F) offerings of securities by a church or other charitable institution that is exempt from SEC registration pursuant to Section 3(a)(4) of the Securities Act.

(8) No change.

(9) Offerings Required to be Filed

Documents and information relating to all other public offerings including, but not limited to, the following must be filed with the Association for review:

(A) - (E) No change.

(F) securities offered by a bank, savings and loan association, [church or other charitable institution,] or common carrier even though such offering may be exempt from registration with the Commission;

(G) - (H) 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) When the Act was amended in the early 1980s to require that most SEC-registered broker/dealers be members of the NASD, the NASD regulated for the first time broker/dealers that assist churches and other non-profit charitable organizations that raise money through the issuance of securities, generally public offerings of “church bonds.” Church bond and similar offerings by religious and charitable organizations are exempt from SEC registration under Section 3(a)(4) of the Securities Act of 1933 (“Securities Act”), but generally are subject to review by state regulatory authorities. NASD Rule 2710 (the “Corporate Financing Rule”) subjects “church bond” offerings to filing with the Corporate Financing Department of NASD Regulation (“Department”) so that the Department has an opportunity to determine whether compensation terms and arrangements are fair and reasonable for purposes of the rule.

Department staff have found that the aggregate underwriting compensation received by church bond broker/dealers has been significantly below the maximum amount of underwriting compensation that is permitted under Rule 2710. Although initially there was an issue in some cases of appropriate compliance with the SEC Rule 15c2-4,¹ the staff has not recently identified any problems in this area.

In order to more appropriately focus the review efforts of Department staff on the types of offerings that present significant regulatory issues, NASD Regulation proposes to amend the Corporate Financing Rule to exempt bond offerings from the filing requirements, but not the substantive requirements, of the Corporate Financing Rule.

NASD Regulation proposes to implement the proposed rule change on the date of SEC approval.

(b) NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6)² 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 elimination of the requirement in Rule 2710 to file church bond offerings will allow NASD Regulation to better allocate its Department staff resources.

¹ SEC Rule 15c2-4, adopted under the Act, requires that investor funds forwarded to a broker/dealer in a contingent offering be held in an escrow or special account, depending on whether the broker/dealer can carry customer funds or accounts, until the contingency is reached before the funds can be released to the issuer.

² 15 U.S.C. § 78q-3.

(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. 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].

IV. COMMISSION'S FINDINGS AND ORDER GRANTING ACCELERATED APPROVAL OF THE PROPOSED RULE CHANGE

The Commission finds that the NASD's proposal is consistent with the Act and the rules and regulations thereunder applicable to a registered national securities association.

Specifically, the provisions of Section 15A(b)(6)³ of the Act, require, 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. Since offerings exempt from SEC registration under Section 3(a)(4) of the Securities Act in which an NASD member participates do not present regulatory issues that warrant pre-offering review of underwriting terms and arrangements under Rule 2710, the NASD's Corporate Financing Rule, the elimination of the church bond offering filing requirement will allow NASD Regulation to better allocate its Department staff resources and will eliminate an unwarranted filing burden on members.

The Commission, therefore, finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of filing thereof in the Federal Register.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁴ that the proposed rule change be, and hereby is, approved pursuant to delegated authority, 17 CFR 200.30-3(a)(12).⁵

Jonathan G. Katz
Secretary

³ 15 U.S.C. § 78o-3.

⁴ 17 U.S.C. § 78s(B)(2) (1988).

⁵ 17 CFR 200.30-3(a)(12) (1996).