

August 7, 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-98-58**

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](mailto: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.

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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"), National Association of Securities Dealers Regulation, Inc. ("NASD Regulation") is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to amend Rules 9269 and 9360 of the National Association of Securities Dealers, Inc. ("NASD" or "Association") to eliminate the requirement for personal service of decisions in cases involving bars and expulsions. NASD Regulation is also filing, concurrently, related proposed rule changes in File No. SR-NASD-98-57. Below is the text of the proposed rule change, which treats the language in SR-NASD-98-57 as having already been approved. Proposed new language is underlined; proposed deletions are in brackets.

\* \* \*

**9000. CODE OF PROCEDURE**

**9200. DISCIPLINARY PROCEEDINGS**

**9269. Default Decisions**

(a) through (c)

No change.

**(d) Final Disciplinary Action of the Association; Effectiveness of Sanctions**

If a default decision is not appealed pursuant to Rule 9311 or called for review pursuant to Rule 9312 within 25 days after the date the Office of Hearing Officers serves it on the Parties, the default decision shall become the final disciplinary action of the Association for purposes of SEC Rule 19d-1(c)(1). Unless otherwise provided in the default decision, the sanctions shall become effective 30 days after the default decision becomes the

final disciplinary action of the Association, except that a bar or expulsion shall become effective immediately upon the default decision becoming the final disciplinary action of the Association. The Association shall serve the decision on a Respondent by overnight courier, facsimile or other means likely to obtain prompt service when the sanction is a bar or an expulsion.

\* \* \*

### **9360. Effectiveness of Sanctions**

Unless otherwise provided in the decision issued under Rule 9349 or Rule 9351, a sanction (other than a bar or an expulsion) specified in a decision constituting final disciplinary action of the Association for purposes of SEC Rule 19d-1(c)(1) shall become effective 30 days after the date of service of the decision constituting final disciplinary action. A bar or an expulsion shall become effective upon service of the decision constituting final disciplinary action of the Association for purposes of SEC Rule 19d-1(c)(1), unless otherwise specified therein. The Association shall [take reasonable steps to obtain personal service of] serve the decision on a Respondent by overnight courier, facsimile or other means reasonably likely to obtain prompt service when the sanction is a bar or an expulsion.

\* \* \*

(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 March 19, 1998, which authorized the filing of the rule change with the SEC. The Nasdaq Stock Market Inc. 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 meetings on March 19, 1998. 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.

This rule change will become effective 30 days following SEC approval. The NASD will announce the rule change in a Notice to Members promptly after receiving SEC approval.

(b) Questions regarding this rule filing may be directed to Eric Moss, 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

The proposed changes to Rules 9269 and 9360 would establish that in cases involving bars or expulsions, service of decisions should be done by overnight courier, facsimile or other means likely to obtain prompt service. Rule 9269 does not presently contain language addressing the means by which service of default decisions in cases involving bars and expulsions should be accomplished. Rule 9360 currently requires that the Chief Hearing Officer serve all final disciplinary decisions, and that reasonable efforts be made to personally serve (hand delivery) all final decisions imposing a bar or expulsion. Rule 9360's personal service provision for final decisions imposing bars or expulsions was created because these decisions become effective immediately.

With respect to final default decisions imposing bars or expulsions, reasonable efforts at personal service (hand delivery) are generally not successful, and with respect to litigated decisions the most effective type of service is a method such as overnight courier or facsimile.

(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 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 Section 15A(b)(7) in that they further the statutory mandate that the Association establish rules providing that its members and persons associated with its members shall be appropriately disciplined for violation of any provision of this title, the rules or regulations thereunder, the rules of the Municipal Securities Rulemaking Board, or the rules of the Association. The rule changes are consistent with Section 15A(b)(8) in that they further the statutory goals of providing a fair procedure for disciplining members and persons associated with members.

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

Not applicable.

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: \_\_\_\_\_  
Joan C. Conley, Secretary

Date: August 7, 1998

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-NASD-98-58)

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to The Elimination of the Requirement for Personal Service of Decisions in Cases Involving Bars and Expulsions

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.

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

NASD Regulation is proposing to amend Rules 9269 and 9360 of the Code of Procedure of the National Association of Securities Dealers, Inc. ("NASD" or "Association"), to eliminate the requirement for personal service of decisions in cases involving bars and expulsions. NASD Regulation has also filed a related rule change with the Commission in File No. SR-NASD-98-57. Below is the text of the proposed rule change, which treats the language in SR-NASD-98-57 as already having been approved. Proposed new language is in italics; proposed deletions are in brackets.

\* \* \*

**9000. CODE OF PROCEDURE**

**9200. DISCIPLINARY PROCEEDINGS**



**9269. Default Decisions**

(a) through (c)

No change.

**(d) Final Disciplinary Action of the Association; Effectiveness of Sanctions**

If a default decision is not appealed pursuant to Rule 9311 or called for review pursuant to Rule 9312 within 25 days after the date the Office of Hearing Officers serves it on the Parties, the default decision shall become the final disciplinary action of the Association for purposes of SEC Rule 19d-1(c)(1). Unless otherwise provided in the default decision, the sanctions shall become effective 30 days after the default decision becomes the final disciplinary action of the Association, except that a bar or expulsion shall become effective immediately upon the default decision becoming the final disciplinary action of the Association. The Association shall serve the decision on a Respondent by overnight courier, facsimile or other means likely to obtain prompt service when the sanction is a bar or an expulsion.

\* \* \*

**9360. Effectiveness of Sanctions**

Unless otherwise provided in the decision issued under Rule 9349 or Rule 9351, a sanction (other than a bar or an expulsion) specified in a decision constituting final disciplinary action of the Association for purposes of SEC Rule 19d-1(c)(1) shall become effective [on a date established by the Chief Hearing Officer, which shall not be earlier than] 30 days after the date of service of the decision constituting final disciplinary action. A bar or an expulsion shall become effective upon service of the decision constituting final disciplinary action of the Association for purposes of SEC Rule 19d-1(c)(1), unless otherwise

specified therein. The Association shall [take reasonable steps to obtain personal service of] serve the decision on a Respondent by overnight courier, facsimile or other means reasonably likely to obtain prompt service when the sanction is a bar or an expulsion.

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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

(1) Purpose

The proposed changes to Rules 9269 and 9360 would establish that in cases involving bars or expulsions, service of decisions should be done by overnight courier, facsimile or other means likely to obtain prompt service. Rule 9269 does not presently contain language addressing the means by which service of default decisions in cases involving bars and expulsions should be accomplished. Rule 9360 currently requires that the Chief Hearing Officer serve all final disciplinary decisions, and that reasonable efforts be made to personally serve (hand delivery) all final decisions imposing a bar or expulsion. Rule 9360's personal service provision for final decisions imposing bars or expulsions was created because these decisions become effective immediately.

With respect to final default decisions imposing bars or expulsions, reasonable efforts at personal service (hand delivery) are generally not successful, and with respect to litigated decisions the most effective type of service is a method such as overnight courier or facsimile.

\* \* \*

(2) 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 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 changes are consistent with Section 15A(b)(7) in that they provide for reasonable means to notify parties of default decisions. The rule changes are consistent with Section 15A(b)(8) in that they further the statutory goals of providing a fair procedure for disciplining members and persons associated with members.

(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 thirty-five 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 ninety 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