

February 13, 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 2-2

Re: **SR-NASD-98-13**

Proposed Rule Change to Clarify That Members of the National Adjudicatory Council May Serve as Panelists in the Appeal or Review of Disciplinary Proceedings

Dear Ms. England:

Pursuant to Rule 19b-4, enclosed herewith is the above-numbered rule filing. In lieu of a 3-1/2" disk containing the rule filing, the rule filing has been electronically transmitted to the SEC to facilitate production of the Federal Register.

If you have any questions, please contact Sharon Zackula, Assistant General Counsel, Office of the General Counsel, NASD Regulation, Inc., at (202) 728-8985. The fax number of the Office of General Counsel is (202) 728-8264.

Very truly yours,

Alden Adkins
Senior Vice President and General Counsel

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 Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), NASD Regulation, Inc. ("NASD Regulation") is filing a proposed rule change to Rule 9120(v) and Rule 9331 of the Rules of the National Association of Securities Dealers, Inc. ("NASD" or "Association") to clarify that current and former members of the National Adjudicatory Council may serve as Panelists on a Subcommittee or an Extended Proceeding Committee in the appeal or review of disciplinary proceedings undertaken pursuant to the Rule 9300 Series of the revised Code of Procedure.¹ During the most recent revisions undertaken to conform the Code of Procedure and related rules to the corporate restructuring of the Association, the Association failed to add in Rule 9331 an explicit reference to the members of the National Adjudicatory Council, which was required because another defined term in the rule, "Director," was amended, resulting in the exclusion of members of the National Adjudicatory Council from its scope. A conforming change is required in Rule 9120(v). Below is the text of the proposed rule change; proposed new language is underlined and proposed deletions are in brackets.

* * *

¹ Securities Exchange Act Release No. 34-39470 (December 19, 1997), 62 FR 67927 (Dec. 30, 1997) (approving File No. SR-NASD-97-81) and Securities Exchange Act Release No. 34-38908 (August 7, 1997), 62 FR 43385 (August 13, 1997) (approving File No. SR-NASD-97-28).

9000. CODE OF PROCEDURE

9120. Definitions

(a) through (u)

No change.

(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 or former member of the National Adjudicatory Council or a former Director or a former Governor who is appointed to serve on a Subcommittee or an Extended Proceeding Committee.

(w) through (bb)

No change.

* * *

9331. Appointment of Subcommittee or Extended Proceeding Committee

(a) **Appointment by National Adjudicatory Council**

No change.

(1) **Subcommittee**

Except as provided in subparagraph (2), for each disciplinary proceeding appealed or called for review, the National Adjudicatory Council or the Review Subcommittee shall appoint a Subcommittee to participate, subject to Rule 9345, in the appeal or review. A Subcommittee shall be composed of two or more persons

who shall be current or former members of the National Adjudicatory Council or former Directors or Governors.

(2) Extended Proceeding Committee

Upon consideration of the volume and complexity of the certified record, or other factors the National Adjudicatory Council or the Review Subcommittee deems material, the National Adjudicatory Council or the Review Subcommittee may determine that a disciplinary proceeding appealed or called for review shall be designated an Extended Proceeding and shall appoint an Extended Proceeding Committee to participate, subject to Rule 9345, in the appeal or review. The Extended Proceeding Committee shall be composed of two or more persons who shall be current or former members of the National Adjudicatory Council or former Directors or former Governors. The Review Subcommittee shall have discretion to compensate any or all Panelists of an Extended Proceeding Committee at the rate then in effect for arbitrators appointed under the Rule 10000 Series.

(b) No change.

* * *

2. Procedures of the Self-Regulatory Organization

(a) The proposed rule change was approved by the Board of Directors of NASD Regulation (“NASD Regulation Board”) at its meeting on September 22, 1997, which authorized the filing of the rule change with the SEC. The Nasdaq Stock Market, Inc. (“Nasdaq”) 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. The NASD Board of Governors had an opportunity to review the proposed rule change at its meeting on October 9, 1997. No other action by the Association is necessary for the filing of the proposed rule change. Article VII, Section 1(a)(2) of the NASD By-Laws permits the NASD Board to adopt amendments to the rules of the Association without recourse to the membership for approval.

(b) Questions regarding this rule filing may be directed to Sharon Zackula, NASD Regulation, Office of General Counsel, at (202) 728-8985.

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

(a) Purpose

The Association is filing a proposed rule change to Rule 9331 and Rule 9120 (v) to clarify that current and former members of the National Adjudicatory Council may serve as Panelists on Subcommittees or Extended Proceeding Committees in the appeal or review of a disciplinary proceeding undertaken pursuant to the Rule 9300 Series of the recently revised Code of Procedure (the Rule 9000 Series). Members of the National Adjudicatory Council (formerly, the National Business Conduct Committee) have served as the primary pool from which Panelists are drawn to serve on disciplinary Subcommittees or Extended Proceeding Committees. However, due to the reconfiguration of the National Business Conduct Committee as the National Adjudicatory Council, which was part of the corporate restructuring of the Association, an explicit reference to the members of the National

Adjudicatory Council as such Panelists is now required in Rule 9331 (a)(1) and (2). The explicit reference in Rule 9331 is now required because formerly, a reference to the members of the NASD Regulation Board included the members of the National Adjudicatory Council. During the most recent revisions to the Code of Procedure, the Association failed to add in Rule 9331 an explicit reference to the members of the National Adjudicatory Council, which was required because another defined term in the rule, “Director,” was amended, resulting in the exclusion of members of the National Adjudicatory Council from its scope. A conforming change is required in Rule 9120(v).

(b) Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(7) and (8) under the Act. The proposed rule change is consistent with Section 15A(b)(7) in that it furthers 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 change is consistent with Section 15A(b)(8) in that it furthers 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)

NASD Regulation requests the Commission to find good cause pursuant to Section 19(b)(2) of the Act to approve the proposed rule change prior to the 30th day after its publication in the Federal Register. NASD Regulation believes that good cause exists to accelerate approval of the proposed rule change because the proposed rule change will allow the National Adjudicatory Council to fully and efficiently fulfill its responsibility to consider disciplinary proceedings on appeal or review under the Rule 9300 Series, and the proposed amendments to Rule 9331 and Rule 9120(v) reflect a part of a procedure that the Association's Rules contained in the Code of Procedure prior to the most recent

amendments,² which the Association intended to continue under the Code of Procedure, as amended.

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: _____
Alden Adkins, Senior Vice President and General Counsel

February 13, 1998

²The most recent amendments, set forth in File No. SR-NASD-97-81 and approved on December 19, 1997, became effective on January 16, 1998. See n.1, supra.

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-NASD-98-13)

Self-Regulatory Organizations; Notice of Filing and Accelerated Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Appointment of Members of the National Adjudicatory Council as Panelists in Appeals of Disciplinary Proceedings

[leave space for date]

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 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 filing a proposed rule change to Rule 9120(v) and Rule 9331 of the Rules of the National Association of Securities Dealers, Inc. ("NASD" or "Association") to clarify that current and former members of the National Adjudicatory Council may serve as Panelists on a Subcommittee or an Extended Proceeding Committee in the appeal or review of disciplinary proceedings undertaken pursuant to the Rule 9300 Series of the revised Code of Procedure.¹ During the most recent revisions undertaken to conform the Code of

¹ Securities Exchange Act Release No. 34-39470 (December 19, 1997), 62 FR 67927 (Dec. 30, 1997) (approving File No. SR-NASD-97-81) and Securities Exchange Act Release No. 34-38908 (August 7, 1997), 62 FR 43385

Procedure and related rules to the corporate restructuring of the Association, the Association failed to add in Rule 9331 an explicit reference to the members of the National Adjudicatory Council, which was required because another defined term in the rule, "Director," was amended, resulting in the exclusion of members of the National Adjudicatory Council from its scope. A conforming change is required in Rule 9120(v). Below is the text of the proposed rule change; proposed new language is underlined and proposed deletions are in brackets.

* * *

9000. CODE OF PROCEDURE

9120. Definitions

(a) through (u)

No change.

(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 or former member of the National Adjudicatory Council or a former Director or a former Governor who is appointed to serve on a Subcommittee or an Extended Proceeding Committee.

(w) through (bb)

No change.

* * *

9331. Appointment of Subcommittee or Extended Proceeding Committee

(a) Appointment by National Adjudicatory Council

No change.

(1) Subcommittee

Except as provided in subparagraph (2), for each disciplinary proceeding appealed or called for review, the National Adjudicatory Council or the Review Subcommittee shall appoint a Subcommittee to participate, subject to Rule 9345, in the appeal or review. A Subcommittee shall be composed of two or more persons who shall be current or former members of the National Adjudicatory Council or former Directors or Governors.

(2) Extended Proceeding Committee

Upon consideration of the volume and complexity of the certified record, or other factors the National Adjudicatory Council or the Review Subcommittee deems material, the National Adjudicatory Council or the Review Subcommittee may determine that a disciplinary proceeding appealed or called for review shall be designated an Extended Proceeding and shall appoint an Extended Proceeding Committee to participate, subject to Rule 9345, in the appeal or review. The

Extended Proceeding Committee shall be composed of two or more persons who shall be current or former members of the National Adjudicatory Council or former Directors or former Governors. The Review Subcommittee shall have discretion to compensate any or all Panelists of an Extended Proceeding Committee at the rate then in effect for arbitrators appointed under the Rule 10000 Series.

(b) No change.

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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 Association is filing a proposed rule change to Rule 9331 and Rule 9120 (v) to clarify that current and former members of the National Adjudicatory Council may serve as Panelists on Subcommittees or Extended Proceeding Committees in the appeal or review of a disciplinary proceeding undertaken pursuant to the Rule 9300 Series of the recently revised

Code of Procedure (the Rule 9000 Series). Members of the National Adjudicatory Council (formerly, the National Business Conduct Committee) have served as the primary pool from which Panelists are drawn to serve on disciplinary Subcommittees or Extended Proceeding Committees. However, due to the reconfiguration of the National Business Conduct Committee as the National Adjudicatory Council, which was part of the corporate restructuring of the Association, an explicit reference to the members of the National Adjudicatory Council as such Panelists is now required in Rule 9331 (a)(1) and (2). The explicit reference in Rule 9331 is now required because formerly, a reference to the members of the NASD Regulation Board included the members of the National Adjudicatory Council. During the most recent revisions to the Code of Procedure, the Association failed to add in Rule 9331 an explicit reference to the members of the National Adjudicatory Council, which was required because another defined term in the rule, "Director," was amended, resulting in the exclusion of members of the National Adjudicatory Council from its scope. A conforming change is required in Rule 9120(v).

(b) Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b) of the Act,² and, in particular, paragraphs (b)(7) and (b)(8). The proposed rule change is consistent with Section 15A(b)(7) in that it furthers 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

² 15 U.S.C. § 78o-3.

of this title, the rules or regulations thereunder, the rules of the Municipal Securities Rulemaking Board, or the rules of the Association. The rule change is consistent with Section 15A(b)(8) in that it furthers 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

NASD Regulation has requested that the Commission to find good cause pursuant to Section 19(b)(2) of the Act to approve the proposed rule change prior to the 30th day after its 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 publication of notice of filing thereof in that the proposed rule change will allow the National Adjudicatory Council to fully and efficiently

fulfill its responsibility to consider disciplinary proceedings on appeal or review under the Rule 9300 Series, and the proposed amendments to Rule 9331 and Rule 9120(v) reflect a part of a procedure that the Association's Rules contained in the Code of Procedure prior to the most recent amendments,³ which the Association intended to continue under the Code of Procedure, as amended.

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].

³ The most recent amendments, set forth in File No. SR-NASD-97-81 and approved on December 19, 1997, became effective on January 16, 1998. See n.1, supra.

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

Jonathan G. Katz
Secretary