

March 11, 2003

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-2003-36 – Amendments to NASD Rule 2340

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 Patricia Albrecht, Office of General Counsel, Regulatory Policy and Oversight, at (202) 728-8026; e-mail patricia.albrecht@nasd.com. The fax number of the Office of General Counsel is (202) 728-8264.

Very truly yours,

Marc Menchel
Senior Vice President
and General Counsel

Enclosures

File No. SR-NASD-2003-36
Consists of 13 Pages
March 11, 2003

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 (“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Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to amend NASD Rule 2340 to eliminate outdated and unnecessary references to SEC Rule 15c3-1 under the Act. Pursuant to Section 19(b)(3)(A)(i) of the Act,¹ and Rule 19b-4(f)(1) thereunder,² NASD has designated this proposal as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule, which renders the proposed rule change immediately effective upon filing. Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

2200. Transactions with Customers

* * * * *

2340. Customer Account Statements

(a) through (b) No change.

(c) Definitions

For purposes of this Rule, the following terms will have the stated meanings:

(1) No change.

(2) a “general securities member” refers to any member [which] that conducts a general securities business and is required to calculate its net capital pursuant to the provisions of SEC Rule 15c3-1(a)[, except for paragraphs (a)(2) and (a)(3)].
Notwithstanding the foregoing definition, a member [which] that does not carry customer

¹ 15 U.S.C. 78s(b)(3)(A)(i).

² 17 CFR 240.19b-4(f)(1).

accounts and does not hold customer funds [and] or securities is exempt from the provisions of this section.

(3) through (5) No change.

(d) 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 Governors of NASD (“Board”) and authorized for filing with the SEC pursuant to a delegation of authority granted by the Board at its meeting on January 23, 2003, to the General Counsel of NASD Regulatory Policy and Oversight (or his officer designee) to file, without further specific Board authorization, administrative, technical, conforming, and non-substantive changes to NASD rules (“Delegation of Authority”). Counsel for The Nasdaq Stock Market and NASD Dispute Resolution were provided an opportunity to consult with respect to the Delegation of Authority, pursuant to the Plan of Allocation and Delegation of Functions by NASD to its Subsidiaries. The staff will advise the Board of any action taken pursuant to the Delegation of Authority. No other action by 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. The proposed rule change is effective immediately upon filing.

(b) Questions regarding this rule filing may be directed to Patricia Albrecht, Assistant General Counsel, Office of General Counsel, Regulatory Policy and Oversight, at (202) 728-8026.

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

(a) Purpose

The proposed rule change would eliminate from NASD Rule 2340 outdated and unnecessary references to SEC Rule 15c3-1. NASD Rule 2340 requires that a general securities member send to customers quarterly account statements. Rule 2340(c)(2) defines a general securities member as “any member which conducts a general securities business and is required to calculate its net capital pursuant to the provisions of SEC Rule 15c3-1(a), except for paragraphs (a)(2) and (a)(3).” When the SEC amended Rule 15c3-1 to change the net capital requirements of certain broker/dealers, the SEC also moved, with some minor modifications, many of the provisions that were in paragraphs (a)(2) and (a)(3) into new SEC Rule 15c3-1(a)(2)(iv), (v), and (vi).³

Besides being obsolete, the references to old paragraphs (a)(2) and (3) are unnecessary in light of the broader exemption that already exists in NASD Rule 2340(c)(2). Specifically, the second sentence of NASD Rule 2340(c)(2) excludes from the definition of a general securities

³ Specifically, old paragraph (a)(2) described introducing broker/dealers that do not carry customers' accounts, but that occasionally receive customer funds and securities. Old paragraph (a)(2) has been replaced by SEC Rule 15c3-1(a)(2)(iv), which describes broker/dealers that introduce customer accounts and that also receive, but do not hold, customer funds or securities and SEC Rule 15c3-1(a)(2)(vi), which describes broker/dealers that introduce customer accounts but do not receive or hold customer funds or securities or carry customer accounts. Old paragraph (a)(3) described broker/dealers that engage solely in the sale of redeemable shares of registered investment companies and certain other share accounts. These broker/dealers also do not hold customer funds or securities. This category is now described in SEC Rule 15c3-1(a)(2)(v). As a result of these changes, the references to Rule 15c3-1 in NASD Rule 2340 no longer refer to the sections that were intended when NASD Rule 2340 was adopted.

member any member that “does not carry customer accounts and does not hold customer funds and securities.” Because the broker/dealers described in old paragraphs (a)(2) and (a)(3) of SEC Rule 15c3-1 do not carry customer accounts or hold customer funds or securities, the exemption in NASD Rule 2340(c)(2) automatically excludes them from the definition of general securities member.

New references to the amended provisions of SEC Rule 15c3-1 are not being proposed because the broker/dealers described in these provisions also do not carry customer accounts or hold customer funds or securities, and therefore, are excluded from the definition of general securities member by the exemption currently provided in NASD Rule 2340(c)(2). In addition, deleting such references in NASD Rule 2340 prevents the need to change the rule if the broker/dealers described in paragraphs (a)(2)(iv), (v), and (vi) are moved to other provisions in SEC Rule 15c3-1.

In addition, to ensure that Rule 2340(c)(2) more closely reflects the language in SEC Rule 15c3-1 and NASD staff’s long-standing interpretation, the proposed rule change amends the exclusion from the definition of a general securities member for “a member that does not carry customer accounts and does not hold customer funds and securities” to state “a member that does not carry customer accounts and does not hold customer funds or securities” (emphasis added).

(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’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 proposed rule change

would amend NASD Rule 2340 to eliminate outdated and unnecessary references to SEC Rule 15c3-1.

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) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Pursuant to Section 19(b)(3)(A)(i)⁴ of the Act and paragraph (f)(1) of Rule 19b-4 thereunder,⁵ NASD has designated this proposal as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule, which renders the proposed rule change immediately effective upon filing. The proposed rule change amends NASD Rule 2340 to eliminate outdated and unnecessary references to SEC Rule 15c3-1 and does not alter the meaning of Rule 2340.

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

Not applicable.

⁴ 15 U.S.C. 78s(b)(3)(A)(i).

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: _____
Marc Menchel, Senior Vice President and
General Counsel

Date: March 11, 2003

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-NASD-2003-36)

Self-Regulatory Organizations; Notice of Filing and Order Granting Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Amendments to NASD Rule 2340

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 11, 2003, the National Association of Securities Dealers, Inc. (“NASD”), through its General Counsel for Regulatory Policy and Oversight, 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. Pursuant to Section 19(b)(3)(A)(i) of the Act³ and Rule 19b-4(f)(1) thereunder,⁴ NASD has designated this proposal as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule, which renders the proposed rule change effective immediately upon filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(i).

⁴ 17 CFR 240.19b-4(f)(1).

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

NASD is proposing to amend NASD Rule 2340 to eliminate outdated and unnecessary references to SEC Rule 15c3-1. Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

2200. Transactions with Customers

* * * * *

2340. Customer Account Statements

(a) through (b) No change.

(c) Definitions

For purposes of this Rule, the following terms will have the stated meanings:

(1) No change.

(2) a "general securities member" refers to any member [which] that conducts a general securities business and is required to calculate its net capital pursuant to the provisions of SEC Rule 15c3-1(a)[, except for paragraphs (a)(2) and (a)(3)]. Notwithstanding the foregoing definition, a member [which] that does not carry customer accounts and does not hold customer funds [and] or securities is exempt from the provisions of this section.

(3) through (5) No change.

(d) 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 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

The proposed rule change would eliminate from NASD Rule 2340 outdated and unnecessary references to SEC Rule 15c3-1. NASD Rule 2340 requires that a general securities member send to customers quarterly account statements. Rule 2340(c)(2) defines a general securities member as “any member which conducts a general securities business and is required to calculate its net capital pursuant to the provisions of SEC Rule 15c3-1(a), except for paragraphs (a)(2) and (a)(3).” When the SEC amended Rule 15c3-1 to change the net capital requirements of certain broker/dealers, the SEC also moved, with some minor modifications, many of the provisions that were in paragraphs (a)(2) and (a)(3) into new SEC Rule 15c3-1(a)(2)(iv), (v), and (vi).⁵

⁵ Specifically, old paragraph (a)(2) described introducing broker/dealers that do not carry customers’ accounts, but that occasionally receive customer funds and securities. Old paragraph (a)(2) has been replaced by SEC Rule 15c3-1(a)(2)(iv), which describes broker/dealers that introduce customer accounts and that also receive, but do not hold, customer funds or securities and SEC Rule 15c3-1(a)(2)(vi), which describes broker/dealers that introduce customer accounts but do not receive or hold customer funds or securities or carry customer accounts. Old paragraph (a)(3) described broker/dealers that engage solely in the sale of redeemable shares of registered investment companies and certain other share accounts. These broker/dealers also do not hold customer funds or securities. This category is now described in SEC Rule 15c3-1(a)(2)(v). As a result of these changes, the

Besides being obsolete, the references to old paragraphs (a)(2) and (3) are unnecessary in light of the broader exemption that already exists in NASD Rule 2340(c)(2). Specifically, the second sentence of NASD Rule 2340(c)(2) excludes from the definition of a general securities member any member that “does not carry customer accounts and does not hold customer funds and securities.” Because the broker/dealers described in old paragraphs (a)(2) and (a)(3) of SEC Rule 15c3-1 do not carry customer accounts or hold customer funds or securities, the exemption in NASD Rule 2340(c)(2) automatically excludes them from the definition of general securities member.

New references to the amended provisions of SEC Rule 15c3-1 are not being proposed because the broker/dealers described in these provisions also do not carry customer accounts or hold customer funds or securities, and therefore, are excluded from the definition of general securities member by the exemption currently provided in NASD Rule 2340(c)(2). In addition, deleting such references in NASD Rule 2340 prevents the need to change the rule if the broker/dealers described in paragraphs (a)(2)(iv), (v), and (vi) are moved to other provisions in SEC Rule 15c3-1.

In addition, to ensure that Rule 2340(c)(2) more closely reflects the language in SEC Rule 15c3-1 and NASD staff’s long-standing interpretation, the proposed rule change amends the exclusion from the definition of a general securities member for “a member that does not carry customer accounts and does not hold customer funds and securities” to state “a member that does not carry customer accounts and does not hold customer funds or securities” (emphasis added).

references to Rule 15c3-1 in NASD Rule 2340 no longer refer to the sections that were intended when NASD Rule 2340 was adopted.

(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'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 proposed rule change would amend NASD Rule 2340 to eliminate outdated and unnecessary references to SEC Rule 15c3-1.

(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 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

The foregoing rule change has become immediately effective pursuant to Section 19(b)(3)(A)(i) of the Act,⁶ and Rule 19b-4(f)(1) thereunder.⁷ At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change 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.

⁶ 15 U.S.C. 78s(b)(3)(A)(i).

⁷ 17 CFR 240.19b-4(f)(1).

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 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.⁸

Margaret H. McFarland
Deputy Secretary

⁸ 17 CFR 200.30-3(a)(12).