December 21, 2001

Ms. 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-2001-95 -** Adoption of Interpretive Material Regarding Interfering with the Transfer of Customer Accounts

Dear Ms. England:

Pursuant to Rule 19b-4, enclosed please find the above-numbered rule filing. Also enclosed is a 3-l/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 Sarah J. Williams, Office of General Counsel, NASD Regulation, Inc., at (202) 728-8083; e-mail sarah.williams@nasd.com. The fax number of the Office of General Counsel is (202) 728-8264.

Very truly yours,

Patrice M. Gliniecki
Vice President and
Acting General Counsel

Enclosures

File No. SR-NASD-2001-95
Consists of 266 Pages

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. <u>Text of Proposed Rule Change</u>

(a) Pursuant to the provisions of Section 19(b)(3)(A) of the Securities Exchange Act of 1934 (“Act”), the National Association of Securities Dealers, Inc. (“NASD” or “Association”), through its wholly owned subsidiary, NASD Regulation, Inc. (“NASD Regulation”), is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change expressly interpreting NASD Rule 2110 to prohibit members from interfering with a customer’s request to transfer his or her account in connection with the change in employment of the customer’s registered representative, provided that the account is not subject to any lien for monies owed by the customer or other bona fide claim.

Below is the text of the proposed rule change. Proposed new language is underlined.

***

<u>IM 2110-7. Interfering With the Transfer of Customer Accounts in the Context of Employment Disputes</u>

<u>It shall be inconsistent with just and equitable principles of trade for a member or person associated with a member to interfere with a customer’s request to transfer his or her account in connection with the change in employment of the customer’s registered representative, provided that the account is not subject to any lien for monies owed by the customer or other bona fide claim. Prohibited interference includes, but is not limited to, seeking a judicial order or decree that would bar or restrict the submission, delivery or acceptance of a written request from a customer to transfer his or her account. Nothing in this interpretation shall affect the operation of Rule 11870.</u>

***

(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 5, 2001. Counsel for The Nasdaq Stock Market and NASD Dispute Resolution have 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 December 6, 2001. No other action by the NASD is necessary for the filing of the proposed rule change. Section 1(a)(iii) of Article VII of the NASD By-Laws permits the NASD Board of Governors to issue interpretations of NASD Rules without recourse to the membership for approval.

The proposed rule change will take effect upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f). The NASD will announce the implementation date of the proposed rule change in a Notice to Members to be published no later than 60 days following Commission notice of the effective date of the proposed rule change. The implementation date will be 30 days after the date of publication of the Notice to Members.

(b) Questions regarding this rule filing may be directed to Sarah J. Williams, Assistant General Counsel, NASD Regulation, Office of General Counsel, at (202) 728-8083.

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

(a) Purpose

As a condition of employment, certain members require their registered representatives to sign employment contracts in which each registered representative agrees that when he or she leaves the firm, he or she will not take, copy, or share with others any firm records. In addition, the registered representative may agree that, for a certain period of time following his or her departure from the firm, he or she will not solicit the firm's customers for business. Nonetheless, when a registered representative leaves his or her firm for a position at a different firm, clients serviced by the registered representative may request that the registered representative's former firm transfer their accounts to the registered representative's new firm so that the clients may continue their relationship with the registered representative. The registered representative's former firm, concerned that its former employee may have breached his or her employment contract by sharing client information with the new employer, or soliciting clients to transfer their accounts to the registered representative's new firm, sometimes seeks a court order to prevent the transfer of accounts to the registered representative's new firm.[1]

In some cases, members have obtained relief in the form of court orders requiring the registered representative's new employer to reject customer account transfers received from the registered representative's former firm. Members also have obtained court orders requiring the registered representative's new firm to send letters to customers that may have been solicited in breach of an employment agreement stating that the firm is prohibited by a court order from having contact with that customer.

NASD Regulation believes that it is inconsistent with the high standards of commercial honor and just and equitable principles of trade mandated by NASD Rule 2110 for a member, in

---

[1] NASD Code of Arbitration Procedure Rule 10335 permits the parties to arbitration disputes to seek temporary injunctive relief. Proposed amendments to Rule 10335 are currently pending before the SEC. The proposed rule change would not conflict with or affect the operation of Rule 10335 (i.e., the procedure by which temporary injunctive relief may be obtained in intra-industry arbitration disputes), but rather would address the substantive problem of customer harm resulting from firms obtaining temporary injunctive relief that prevents customers from transferring their accounts.

the context of an employment dispute with a former registered representative, to seek to override a customer's request to transfer his or account by obtaining a court order stopping the transfer. Customers should have the freedom to choose the registered representatives and firms that service their brokerage accounts. Moreover, customers whose account transfer requests have been delayed in this manner could be deprived of brokerage services and access to their accounts while their registered representative and his or her former firm attempt to resolve an employment dispute.

In *NASD Notice to Members 79-7* (February 13, 1979), the NASD alerted its members that the SEC had issued a notice to broker/dealers stating that unnecessary delays in transferring customer accounts, including delays accompanied by attempts to persuade customers not to transfer their accounts, are inconsistent with just and equitable principles of trade. Obtaining court orders to prevent customers from following a registered representative to a different firm are similar to the unfair practice of delaying transfers that the SEC warned of in its notice.

To address this practice, the NASD submits this proposed rule change to adopt Interpretive Material 2110-7, which would state that it is inconsistent with just and equitable principles of trade for a member or person associated with a member to interfere with a customer's request to transfer his or her account in connection with the change in employment of the customer's registered representative, provided that the account is not subject to any lien for monies owed by the customer or other bona fide claim. The proposed rule change would not affect the operation of Rule 11870 (governing customer account transfers). Members would continue to have the ability to delay or take exception to account transfers in situations where, for example, the account contains nontransferable assets or the transfer request provides information that is inadequate to identify the account to be transferred.[2]

The proposed rule change does not affect the ability of member firms to use employment agreements to prevent former representatives from soliciting firm customers. Similarly, the proposal would not prevent a firm from enforcing employment agreements with former representatives. For example, a member could seek an injunction against a former registered representative and/or his or her new firm to prohibit solicitation of the member's customers if the registered representative had signed an employment contract agreeing not to solicit those customers. Rather, the proposed rule change is limited to restricting a member from interfering with a customer's right to transfer his or her account in the context of an employment dispute, once the customer has requested the transfer.

(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. NASD Regulation believes that member firms that seek to override a customer's request to transfer his or her account to a new firm in the context of an employment dispute with a former registered representative violate NASD Rule 2110. NASD Regulation believes that this proposed rule

---

[2] The SEC recently approved amendments to NASD Rule 11870 that facilitate the transfer of customer accounts containing third party proprietary products by allowing a firm receiving a customer account from another firm to assess whether the account contains assets that the receiving firm is unable to support, and to inform the customer of his or her available options concerning those assets. See SEC Release No. 34-44787, 66 F.R. 48301 (September 12, 2001).

change is necessary to protect investors and the public interest with respect to transfers of customer accounts.

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

On May 22, 2001, NASD Regulation published Notice to Members 01-36 ("NtM 01-36") seeking comment on a proposed interpretive material to NASD Rule 2110 that would state:

> It shall be inconsistent with just and equitable principles of trade for a member or person associated with a member to take any action that, directly or indirectly, interferes with a customer's ability to transfer his or her account, including seeking a judicial order or decree that would bar or restrict the submission, delivery or acceptance of a written request from a customer to transfer his or her account. Nothing in this interpretation shall affect the operation of Rule 11870.

The comment period expired on July 5, 2001. A copy of NtM 01-36 is attached as Exhibit 2. Eighty-five comments were received in response to the notice. Copies of the comment letters are attached as Exhibit 3.

Of the 85 comments received, 67 agreed that customers should have the ability to move their accounts to new firms without interference from the member firm holding the account. These commenters expressed the view that a firm should not be able to override a customer's decision to move his or her account to a new firm.

Other commenters, while generally supportive of a customer's right to transfer an account to his or her brokerage firm of choice, raised concerns that the language of the proposed interpretive material could impede a member's ability to collect debts and enforce liens against a customer's account. These commenters suggested that the proposed interpretive material should not prevent a member from interfering with a customer's ability to transfer his or her account to avoid paying debts accrued in the account or to evade a lien on assets held in the account. Because NASD Regulation did not intend to interpret Rule 2110 in a manner that would affect the ability of members to collect debts or enforce liens against customers, the language contained in NtM 01-36 has been modified for this proposed rule change to clarify the inapplicability of the proposed rule change in these contexts.

Numerous commenters described other situations in which they thought a member should be able to take action to stop a customer from transferring his or her account. Existing NASD rules address many of these situations. In certain other of the situations described, NASD Regulation believes that the right of a customer to transfer his or her account, once the customer has requested the transfer, should take precedence. For example, some commenters believed that a member should be able to interfere with a customer's ability to transfer his or her account to follow the member's registered representative to a new firm if the registered representative did not disclose to customers the consequences of the transfer (e.g., transfer fees and manner of disposition of any non-transferable assets). While this scenario raises concerns, the current regulatory scheme addresses these concerns. Firms are required to deliver to customers information regarding the applicable fees for opening, maintaining and closing an account. In addition, NASD Rule 11870 requires that customers requesting transfer of an account be notified of non-transferable assets in an account. Anti-fraud provisions, as well as NASD Rule 2110, are available to address false or misleading statements a registered representative may have made to a customer to induce the customer to transfer his or her account.

Some commenters suggested that a member should be able to interfere with the customer's ability to transfer his or her account to follow one of the member's registered representatives to a new firm if the customer was the client of one of the member's other registered representatives, or if the customer opened the account to form a relationship with the member, and not with a particular registered representative. NASD Regulation believes that the customer's decision should be controlling, even under these circumstances.

Sixteen commenters objected to the adoption of an interpretive material that would prohibit members from interfering with a customer's request to transfer his or her account to a new firm when the customer sought to follow a registered representative to a new firm. Among the objections raised were concerns that such an interpretation would encourage registered representatives to breach employment contracts. However, nothing in NtM 01-36 or this proposed rule change gives registered representatives the right to breach employment contracts or disclose personal nonpublic information in violation of law. Member firms may seek redress against a registered representative who acts in this manner by, for example, seeking from the registered representative monetary damages or an injunction from further misconduct.

Other commenters asserted that the proposal was inconsistent with the Gramm-Leach-Bliley Act of 1999 ("GLBA"), which requires companies to safeguard the confidentiality of customer information, because a company pursuing legal action against a registered representative pursuant to the member's obligations to protect customer information under GLBA could be in violation of the interpretation. The proposed rule change, however, does not prohibit a member from taking action against a registered representative as necessary to safeguard confidential customer information. The proposed rule change prevents a member from taking action to restrict a customer's ability to transfer his or her account to a new firm once the customer has requested the transfer. To the extent that any improper sharing of confidential customer information occurred prior to the customer's decision to transfer, the firm could seek legal redress without interfering with the customer's decision to move his or her account.

Commenters objecting to the proposal also expressed concern that the interpretation deprived members of access to legal remedies available to resolve employment disputes. The proposed rule change does not deny to members remedies that assist in resolving employment disputes between members and their former registered representatives; the proposed rule change articulates the view of the Association that it is inconsistent with just and equitable principles of trade for a member to harm customers as a means of resolving employment disputes.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3)

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Act and paragraph (f)(1) of Rule 19b-4 thereunder, in that the proposed rule change is a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule.

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.

2. Notice to Members 01-36.

3. Comment letters received in response to Notice to Members 01-36.

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:______________________________________

Patrice M. Gliniecki
Vice President and Acting General Counsel

Date: December 21, 2001

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-NASD-2001-95)

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Adoption of Interpretive Material Regarding Interfering with the Transfer of Customer Accounts

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 December ____, 2001, 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") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Act and paragraph (f)(1) of Rule 19b-4 thereunder, in that the proposed rule change is a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. The Commission is publishing this notice to solicit comment from interested persons.

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

NASD Regulation is interpreting NASD Rule 2110 to prohibit members from interfering with a customer's request to transfer his or her account in connection with the change in

---

1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

employment of the customer's registered representative, provided that the account is not subject to any lien for monies owed by the customer or other bona fide claim.

Below is the text of the proposed rule change. Proposed new language is underlined.

* * *

IM 2110-7. Interfering With the Transfer of Customer Accounts in the Context of Employment Disputes

It shall be inconsistent with just and equitable principles of trade for a member or person associated with a member to interfere with a customer's request to transfer his or her account in connection with the change in employment of the customer's registered representative, provided that the account is not subject to any lien for monies owed by the customer or other bona fide claim. Prohibited interference includes, but is not limited to, seeking a judicial order or decree that would bar or restrict the submission, delivery or acceptance of a written request from a customer to transfer his or her account. Nothing in this interpretation shall affect the operation of Rule 11870.

* * *

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 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

As a condition of employment, certain members require their registered representatives to sign employment contracts in which each registered representative agrees that when he or she leaves the firm, he or she will not take, copy, or share with others any firm records. In addition, the registered representative may agree that, for a certain period of time following his or her departure from the firm, he or she will not solicit the firm's customers for business. Nonetheless, when a registered representative leaves his or her firm for a position at a different firm, clients serviced by the registered representative may request that the registered representative's former firm transfer their accounts to the registered representative's new firm so that the clients may continue their relationship with the registered representative. The registered representative's former firm, concerned that its former employee may have breached his or her employment contract by sharing client information with the new employer, or soliciting clients to transfer their accounts to the registered representative's new firm, sometimes seeks a court order to prevent the transfer of accounts to the registered representative's new firm.[3]

In some cases, members have obtained relief in the form of court orders requiring the registered representative's new employer to reject customer account transfers received from the registered representative's former firm. Members also have obtained court orders requiring the registered representative's new firm to send letters to customers that may have been solicited in breach of an employment agreement stating that the firm is prohibited by a court order from having contact with that customer.

NASD Regulation believes that it is inconsistent with the high standards of commercial honor and just and equitable principles of trade mandated by NASD Rule 2110 for a member, in

---

[3] NASD Code of Arbitration Procedure Rule 10335 permits the parties to arbitration disputes to seek temporary injunctive relief. Proposed amendments to Rule 10335 are currently pending before the SEC. The proposed rule change would not conflict with or affect the operation of Rule 10335 (i.e., the procedure by which temporary injunctive relief may be obtained in intra-industry arbitration disputes), but rather would address the substantive problem of customer harm resulting from firms obtaining temporary injunctive relief that prevents customers from transferring their accounts.

the context of an employment dispute with a former registered representative, to seek to override a customer's request to transfer his or account by obtaining a court order stopping the transfer. Customers should have the freedom to choose the registered representatives and firms that service their brokerage accounts. Moreover, customers whose account transfer requests have been delayed in this manner could be deprived of brokerage services and access to their accounts while their registered representative and his or her former firm attempt to resolve an employment dispute.

In *NASD Notice to Members 79-7* (February 13, 1979), the NASD alerted its members that the SEC had issued a notice to broker/dealers stating that unnecessary delays in transferring customer accounts, including delays accompanied by attempts to persuade customers not to transfer their accounts, are inconsistent with just and equitable principles of trade. Obtaining court orders to prevent customers from following a registered representative to a different firm are similar to the unfair practice of delaying transfers that the SEC warned of in its notice.

To address this practice, the NASD submits this proposed rule change to adopt Interpretive Material 2110-7, which would state that it is inconsistent with just and equitable principles of trade for a member or person associated with a member to interfere with a customer's request to transfer his or her account in connection with the change in employment of the customer's registered representative, provided that the account is not subject to any lien for monies owed by the customer or other bona fide claim. The proposed rule change would not affect the operation of Rule 11870 (governing customer account transfers). Members would continue to have the ability to delay or take exception to account transfers in situations where, for example, the account contains nontransferable assets or the transfer request provides information that is inadequate to identify the account to be transferred.[4]

The proposed rule change does not affect the ability of member firms to use employment agreements to prevent former representatives from soliciting firm customers. Similarly, the proposal would not prevent a firm from enforcing employment agreements with former representatives. For example, a member could seek an injunction against a former registered representative and/or his or her new firm to prohibit solicitation of the member's customers if the registered representative had signed an employment contract agreeing not to solicit those customers. Rather, the proposed rule change is limited to restricting a member from interfering with a customer's right to transfer his or her account in the context of an employment dispute, once the customer has requested the transfer.

(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'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. NASD Regulation believes that member firms that seek to override a customer's request to transfer his or her account to a new firm in the context of an employment dispute with a former registered representative violate NASD Rule 2110. NASD Regulation believes that this proposed rule

---

[4] The SEC recently approved amendments to NASD Rule 11870 that facilitate the transfer of customer accounts containing third party proprietary products by allowing a firm receiving a customer account from another firm to assess whether the account contains assets that the receiving firm is unable to support, and to inform the customer of his or her available options concerning those assets. *See* SEC Release No. 34-44787, 66 F.R. 48301 (September 12, 2001).

change is necessary to protect investors and the public interest with respect to transfers of customer accounts.

(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

On May 22, 2001, NASD Regulation published Notice to Members 01-36 ("NtM 01-36") seeking comment on a proposed interpretive material to NASD Rule 2110 that would state:

> It shall be inconsistent with just and equitable principles of trade for a member or person associated with a member to take any action that, directly or indirectly, interferes with a customer's ability to transfer his or her account, including seeking a judicial order or decree that would bar or restrict the submission, delivery or acceptance of a written request from a customer to transfer his or her account. Nothing in this interpretation shall affect the operation of Rule 11870.

The comment period expired on July 5, 2001. Eighty-five comments were received in response to the notice. Of the 85 comments received, 67 agreed that customers should have the ability to move their accounts to new firms without interference from the member firm holding the account. These commenters expressed the view that a firm should not be able to override a customer's decision to move his or her account to a new firm.

Other commenters, while generally supportive of a customer's right to transfer an account to his or her brokerage firm of choice, raised concerns that the language of the proposed interpretive material could impede a member's ability to collect debts and enforce liens against a customer's account. These commenters suggested that the proposed interpretive material should not prevent a member from interfering with a customer's ability to transfer his or her account to avoid paying debts accrued in the account or to evade a lien on assets held in the account. Because NASD Regulation did not intend to interpret Rule 2110 in a manner that would affect the ability of members to collect debts or enforce liens against customers, the language contained in NtM 01-36 has been modified for this proposed rule change to clarify the inapplicability of the proposed rule change in these contexts.

Numerous commenters described other situations in which they thought a member should be able to take action to stop a customer from transferring his or her account. Existing NASD rules address many of these situations. In certain other of the situations described, NASD Regulation believes that the right of a customer to transfer his or her account, once the customer has requested the transfer, should take precedence. For example, some commenters believed that a member should be able to interfere with a customer's ability to transfer his or her account to follow the member's registered representative to a new firm if the registered representative did not disclose to customers the consequences of the transfer (e.g., transfer fees and manner of disposition of any non-transferable assets).

While this scenario raises concerns, the current regulatory scheme addresses these concerns. Firms are required to deliver to customers information regarding the applicable fees for opening, maintaining and closing an account. In addition, NASD Rule 11870 requires that customers requesting transfer of an account be notified of non-transferable assets in an account. Anti-fraud provisions, as well as NASD Rule 2110, are available to address false or misleading statements a registered representative may have made to a customer to induce the customer to transfer his or her account.

Some commenters suggested that a member should be able to interfere with the customer's ability to transfer his or her account to follow one of the member's registered representatives to a new firm if the customer was the client of one of the member's other registered representatives, or if the customer opened the account to form a relationship with the member, and not with a particular registered representative. NASD Regulation believes that the customer's decision should be controlling, even under these circumstances.

Sixteen commenters objected to the adoption of an interpretive material that would prohibit members from interfering with a customer's request to transfer his or her account to a new firm when the customer sought to follow a registered representative to a new firm. Among the objections raised were concerns that such an interpretation would encourage registered representatives to breach employment contracts. However, nothing in NtM 01-36 or this proposed rule change gives registered representatives the right to breach employment contracts or disclose personal nonpublic information in violation of law. Member firms may seek redress against a registered representative who acts in this manner by, for example, seeking from the registered representative monetary damages or an injunction from further misconduct.

Other commenters asserted that the proposal was inconsistent with the Gramm-Leach-Bliley Act of 1999 ("GLBA"), which requires companies to safeguard the confidentiality of customer information, because a company pursuing legal action against a registered representative pursuant to the member's obligations to protect customer information under GLBA could be in violation of the interpretation. The proposed rule change, however, does not prohibit a member from taking action against a registered representative as necessary to safeguard confidential customer information. The proposed rule change prevents a member from taking action to restrict a customer's ability to transfer his or her account to a new firm once the customer has requested the transfer. To the extent that any improper sharing of confidential customer information occurred prior to the customer's decision to transfer, the firm could seek legal redress without interfering with the customer's decision to move his or her account.

Commenters objecting to the proposal also expressed concern that the interpretation deprived members of access to legal remedies available to resolve employment disputes. The proposed rule change does not deny to members remedies that assist in resolving employment disputes between members and their former registered representatives; the proposed rule change articulates the view of the Association that it is inconsistent with just and equitable principles of trade for a member to harm customers as a means of resolving employment disputes.

III. DATE OF EFFECTIVENESS OF THE PROPOSED RULE CHANGE AND TIMING FOR COMMISSION ACTION

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Act and paragraph (f)(1) of Rule 19b-4 thereunder, in that the proposed rule change is a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within 60 days of this filing, the Commission may summarily abrogate this proposal 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.

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