

February 15, 2000

Katherine A. England  
Assistant Director  
Division of Market Regulation  
Securities and Exchange Commission  
450 Fifth Street, N.W.  
Washington, D.C. 20549-1001  
Mail Stop 10-1

Re: **File No. SR-NASD-00-05 - Release of Disciplinary Information**

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 [eric.moss@nasd.com](mailto:eric.moss@nasd.com). The fax number of the Office of General Counsel is (202) 728-8264.

Very truly yours,

Alden S. Adkins  
Sr. Vice President  
and General Counsel

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”), 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 to amend NASD IM-8310-2 to provide for the publication of all final, litigated decisions issued by the Office of Hearing Officers, the National Adjudicatory Council and the NASD Board, regardless of sanctions imposed. Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

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**IM-8310-2. Release of Disciplinary Information**

(a) through (c) No change.

(d)(1) The Association shall release to the public information with respect to any disciplinary decision issued pursuant to the Rule 9000 Series imposing a suspension, cancellation or expulsion of a member; or suspension or revocation of the registration of a person associated with a member; or suspension or barring of a member or person associated with a member from association with all members; or imposition of monetary sanctions of \$10,000 or more upon a member or person associated with a member; or containing an allegation of a violation of a Designated Rule; and may also release such information with respect to any disciplinary decision or group of decisions that involve a significant policy or enforcement determination where the release of information is deemed

by the President of NASD Regulation, Inc. to be in the public interest. The Association also may release to the public information with respect to any disciplinary decision issued pursuant to the Rule 8220 Series imposing a suspension or cancellation of the member or a suspension of the association of a person with a member, unless the National Adjudicatory Council determines otherwise. The National Adjudicatory Council may, in its discretion, determine to waive the requirement to release information with respect to a disciplinary decision under those extraordinary circumstances where the release of such information would violate fundamental notions of fairness or work an injustice.

The Association may release to the public information on any other final, litigated, disciplinary decision issued pursuant to the Rule 8220 Series or Rule 9000 Series, not specifically enumerated in this paragraph, regardless of sanctions imposed, so long as the names of the parties and other identifying information is redacted.

(2) No changes.

(e) through (m) 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 Directors of NASD Regulation at its meeting on January 26, 2000, which authorized the filing of the rule change with the SEC. The Nasdaq Stock Market has been provided an opportunity to consult with respect to the proposed rule change, pursuant to the Plan of Allocation and Delegation of Functions by the NASD to its Subsidiaries. The NASD Board of Governors

had an opportunity to review the proposed rule change at its meeting on January 27, 2000.

No other action by the NASD is necessary for the filing of the proposed rule change

The NASD will announce the effective date of the proposed rule change in a Notice to Members to be published no later than 60 days following Commission approval. The effective date will be 30 days following publication of the Notice to Members announcing Commission approval.

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

Some, but not all, NASD disciplinary decisions are currently available in electronic legal research databases, such as Westlaw, Lexis-Nexis, and Books on Screen. Interpretive Material 8310-2 (the "Interpretation") permits the NASD to release any disciplinary decision: (1) imposing a suspension, cancellation or expulsion of a member; (2) imposing a suspension or revocation of the registration of any associated person; (3) imposing a suspension or barring a member or associated person from association with all members; (4) imposing monetary sanctions of \$10,000 or more on a member or associated person; (5) containing an alleged violation of a Designated Rule; or (6) deemed by the President of NASD Regulation to involve a significant policy or enforcement determination where the release of information would be in the public interest.

Disciplinary decisions provide guidance in how NASD rules are to be interpreted and enforced. The Association believes that providing vendors of legal research databases

with all final, litigated decisions issued by the Office of Hearing Officers (“OHO”),<sup>1</sup> the National Adjudicatory Council (“NAC”), and the NASD Board, edited to prevent the disclosure of the identities of respondents upon whom minimal or no sanctions are imposed, is in the public interest.

Accordingly, the Association is proposing to amend the Interpretation to provide for the publication of all final, litigated decisions issued by the OHO, the NAC, and the NASD Board, regardless of sanctions imposed. However, the names of the parties and other identifying information mentioned in the decisions that do not meet the current enumerated publication criteria, as outlined in the Interpretation (and listed above), will be redacted from these decisions. Settlements, Letters of Acceptance Waivers and Consents (“AWCs”), and Minor Rule Violation Plan letters are excluded from the proposal. This proposal will not have any impact on the information contained in or disclosed by the Central Registration Depository system.

The Association will make all decisions covered under this proposal available that were issued after August 7, 1997, the effective date of the most recent significant changes to the NASD Code of Procedure.<sup>2</sup> The Association believes that the disciplinary decisions issued after August 7, 1997, are of special value in providing a clearer picture of the Association’s current application and interpretation of its substantive and procedural rules. The Association does not believe that the benefits that would arise from publishing decisions that pre-date August 7, 1997, justify the administrative burdens that would result

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<sup>1</sup> The OHO issues decisions rendered by Hearing Officers (default decisions) and Hearing Panels.

<sup>2</sup> See *Special NASD Notice to Members* 97-55 (August 1997).

from having to redact the names of parties and other identifying information from these decisions.

(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. The NASD believes that the proposed rule changes are consistent with Section 15A(b)(7) in that they work to safeguard adequately the interests of investors while establishing fair and reasonable rules for its members and persons associated with its members. 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 associated persons.

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

NASD Regulation does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

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

Not applicable.

9. Exhibits

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 S. Adkins  
Sr. Vice President and General Counsel

Date: February 15, 2000



EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-NASD- 00-05)

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the release of disciplinary information

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on February 15, 2000, the National Association of Securities Dealers, Inc. (“NASD” or “Association”), through its wholly owned subsidiary, 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 IM-8310-2 of the Association, to provide for the publication of all final, litigated decisions issued by the Office of Hearing Officers, the National Adjudicatory Council, and the NASD Board, regardless of sanctions imposed. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

**IM-8310-2. Release of Disciplinary Information**

(a) through (c) No change.

(d)(1) The Association shall release to the public information with respect to any disciplinary decision issued pursuant to the Rule 9000 Series imposing a suspension, cancellation or expulsion of a member; or suspension or revocation of the registration of a person associated with a member; or suspension or barring of a member or person associated with a member from association with all members; or imposition of monetary sanctions of \$10,000 or more upon a member or person associated with a member; or containing an allegation of a violation of a Designated Rule; and may also release such information with respect to any disciplinary decision or group of decisions that involve a significant policy or enforcement determination where the release of information is deemed by the President of NASD Regulation, Inc. to be in the public interest. The Association also may release to the public information with respect to any disciplinary decision issued pursuant to the Rule 8220 Series imposing a suspension or cancellation of the member or a suspension of the association of a person with a member, unless the National Adjudicatory Council determines otherwise. The National Adjudicatory Council may, in its discretion, determine to waive the requirement to release information with respect to a disciplinary decision under those extraordinary circumstances where the release of such information would violate fundamental notions of fairness or work an injustice.

The Association may release to the public information on any other final, litigated, disciplinary decision issued pursuant to the Rule 8220 Series or Rule 9000 Series, not specifically enumerated in this paragraph, regardless of sanctions imposed, so long as the names of the parties and other identifying information is redacted.

(2) No changes.

(e) through (m) 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

#### (a) **Purpose**

Some, but not all, NASD disciplinary decisions are currently available in electronic legal research databases, such as Westlaw, Lexis-Nexis, and Books on Screen. Interpretive Material 8310-2 (the "Interpretation") permits the NASD to release any disciplinary decision: (1) imposing a suspension, cancellation or expulsion of a member; (2) imposing a suspension or revocation of the registration of any associated person; (3) imposing a suspension or barring a member or associated person from association with all members; (4) imposing monetary sanctions of \$10,000 or more on a member or associated person; (5) containing an alleged violation of a Designated Rule; or (6) deemed by the President of NASD Regulation to involve a significant policy or enforcement determination where the release of information would be in the public interest.

Disciplinary decisions provide guidance in how NASD rules are to be interpreted and enforced. The Association believes that providing vendors of legal research databases with all final, litigated decisions issued by the Office of Hearing Officers (“OHO”),<sup>3</sup> the National Adjudicatory Council (“NAC”), and the NASD Board, edited to prevent the disclosure of the identities of respondents upon whom minimal or no sanctions are imposed, is in the public interest.

Accordingly, the Association is proposing to amend the Interpretation to provide for the publication of all final, litigated decisions issued by the OHO, the NAC, and the NASD Board, regardless of sanctions imposed. However, the names of the parties and other identifying information mentioned in the decisions that do not meet the current enumerated publication criteria, as outlined in the Interpretation (and listed above), will be redacted from these decisions. Settlements, Letters of Acceptance Waivers and Consents (“AWCs”), and Minor Rule Violation Plan letters are excluded from the proposal. This proposal will not have any impact on the information contained in or disclosed by the Central Registration Depository system.

The Association will make all decisions covered under this proposal available that were issued after August 7, 1997, the effective date of the most recent significant changes to the NASD Code of Procedure.<sup>4</sup> The Association believes that the disciplinary decisions issued after August 7, 1997, are of special value in providing a clearer picture of the Association’s current application and interpretation of its substantive and procedural rules. The Association does not believe that the benefits that would arise from publishing decisions that pre-date August 7, 1997,

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<sup>3</sup> The OHO issues decisions rendered by Hearing Officers (default decisions) and Hearing Panels.

<sup>4</sup> See *Special NASD Notice to Members* 97-55 (August 1997).

justify the administrative burdens that would result from having to redact the names of parties and other identifying information from these decisions.

**(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. The NASD believes that the proposed rule changes are consistent with Section 15A(b)(7) in that they work to adequately safeguard the interests of investors while establishing fair and reasonable rules for its members and persons associated with its members. 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 associated persons.

**(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 35 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 90 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