

March 27, 2001

Ms. Katherine A. England
Assistant Director
Division of Market Regulation
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Re: **File No. SR-NASD-00-38, Amendment No. 2** - Application of Rules of the
Association and Interpretive Materials thereunder to Certain Exempted Securities

Dear Ms. England:

NASD Regulation, Inc. ("NASD Regulation") hereby amends the above-referenced rule filing, as reflected in the proposed rule language attached as Exhibit 1, to include NASD Rules 2521 and 2522 in the list of rules that apply to exempted securities, except municipal securities, in proposed Rule 0116. Rule 2520 was included in the list of rules specified as applying to exempted securities, except municipal securities, in the Securities and Exchange Commission's ("SEC") approval of SR-NASD-95-39.¹ At that time, current Rules 2521 and 2522 were paragraphs (a) and (b) of Rule 2520, respectively. Paragraphs (a) and (b) of Rule 2520 subsequently were renumbered as Rules 2521 and 2522, respectively, as part of SR-NASD-97-14.² Therefore, NASD Regulation is amending proposed Rule 0116 to include Rules 2521 and 2522.

NASD Regulation is clarifying that Rule 2910, Rule 8220 (which has been expanded to Rules 8221 through 8227, as described below) and IM-8310-2 were intended to apply to transactions and business activities relating to exempted securities, except municipal securities, although not explicitly included in the original list provided in SR-NASD-95-39. Prior to the reorganization of the NASD manual approved by the SEC in 1996,³ Rule 2910, Rule 8220 and IM-8310-2 were "Resolutions of the Board" relating to Article III, Section 22, Article IV, Section 5 and Article V, Section 1, respectively ("Resolutions"). None of the Resolutions were specifically included in the list designated as "applicable" or "not applicable" to exempted securities provided in SR-NASD-95-39 because they were considered part of the rule to which they were a resolution, and therefore, it was deemed unnecessary to specifically reference the Resolutions. The Resolutions were considered applicable or not applicable to exempted securities according to how the corresponding rule was designated. With respect to the Resolutions, all

¹ See Securities Exchange Act Release No. 37588 (Aug. 20, 1996), 61 FR 44100 (Aug. 27, 1996) (order approving File No. SR-NASD-95-39).

² See Securities Exchange Act Release No. 38729 (June 10, 1997), 62 FR 32669 (June 16, 1997) (order approving File No. SR-NASD-97-14).

³ See Securities Exchange Act Release No. 36698 (Jan. 11, 1996), 61 FR 1419 (Jan. 19, 1996) (order approving File No. SR-NASD-95-51).

Ms. Katherine A. England
March 27, 2001
Page 2

three corresponding rules were designated as applicable to exempted securities in SR-NASD-95-39. As a result, NASD Regulation included in proposed Rule 0116 the current rules that correspond to the Resolutions as applicable to transactions in exempted securities, except municipals.

NASD Regulation also is clarifying why Rules 8221 through 8227 are included in the list of rules contained in proposed Rule 0116, although these rules were not included in the list of rules specified in SR-NASD-95-39. Rules 8221 through 8227 were adopted in 1997 as part of SR-NASD-97-28.⁴ Prior to the approval of SR-NASD-97-28, Rule 8220, "Suspension of Members for Failure to Furnish Information Duly Requested," detailed the penalties that can result if a member does not provide information requested by the NASD, and described NASD procedures surrounding the imposition of such penalties. SR-NASD-97-28, among other things, adopted Rules 8221 through 8227 in place of Rule 8220, and Rule 8220 became the title provision of that series of rules. Rules 8221 through 8227 have the same purpose as Rule 8220, in that they provide the penalties that can result, the suspension or cancellation of membership, if a member does not provide information requested by the NASD. In addition, Rules 8221 through 8227 provide for procedural enhancements to this process, including for example, a hearing process through which the member can appeal an initial decision of the NASD.

If you have any questions, please contact Stephanie M. Dumont, Office of General Counsel, NASD Regulation, Inc., at (202) 728-8176; e-mail Stephanie.Dumont@nasd.com. The fax number of the Office of General Counsel is (202) 728-8264.

Very truly yours,

Patrice M. Gliniecki
Vice President and
Deputy General Counsel

cc: Yvonne Fraticelli

Attachment

⁴ See Securities Exchange Act Release No. 38908 (Aug. 7, 1997), 62 FR 43385 (Aug. 13, 1997) (order approving File No. SR-NASD-97-28).

Exhibit 1 - Proposed Rule Language

0100. GENERAL PROVISIONS

0110. Adoption and Application of Rules

0116. Application of Rules of the Association to Exempted Securities

(a) For purposes of this Rule, the terms “exempted securities” and “municipal securities” shall have the meanings specified in Sections 3(a)(12) and 3(a)(29) of the Act, respectively.

(b) Unless otherwise indicated within a particular provision, the following Rules of the Association and Interpretative Materials thereunder are applicable to transactions and business activities relating to exempted securities, except municipal securities, conducted by members and associated persons: 2110, 2120, 2210, IM-2210-1, IM-2210-2, IM-2210-3, 2250, 2270, 2310, IM-2310-2, IM-2310-3, 2320, 2330, IM-2330, 2340, 2430, 2450, 2510, 2520, 2521, 2522, IM-2522, 2770, 2780, 2820(g), 2910, 3010, 3020, 3030, 3040, 3050, 3060, 3070, 3110, IM-3110, 3120, 3130, IM-3130, 3131, 3140, 3230, 3310, IM-3310, 3320, IM-3320, 3330, 8110, 8120, 8210, 8221, 8222, 8223, 8224, 8225, 8226, 8227, 8310, IM-8310-1, IM-8310-2, 8320 and 8330.

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