

Shirley H. Weiss
Associate General Counsel

Direct: (202) 728-8844
Fax: (202) 728-8264

Ms. Katherine A. England
Assistant Director
Division of Market Regulation
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-02001

**RE: File No. SR-2005-064 – Proposed Rule Change Relating to Publication of
NAC Decisions Pursuant to NASD Rule 1015: Response to Comments**

Dear Ms. England:

NASD hereby responds to the two comment letters¹ received by the Securities and Exchange Commission ("Commission" or "SEC") in response to the publication in the Federal Register of Notice of Filing of SR-2005-064 relating to NASD authority to release to the public, in unredacted form, information with respect to any decision issued by the National Adjudicatory Council ("NAC") pursuant to NASD Rule 1015.² These commenters oppose the proposed rule change on the basis that publication of NAC decisions issued under NASD Rule 1015 would infringe on personal rights of privacy by permitting NASD to reveal to the public details concerning private transactions between private individuals.

In response, NASD first notes that disclosure under the proposed rule change would not involve every application for NASD membership, but would be limited to those applications that culminate in appeal proceedings before the NAC. No other membership applications would be subject to publication by NASD.

Second, the publication of these NAC decisions, with the attendant disclosure of the applicant's proposed business arrangements, must be balanced against the public's interest in being able to read these decisions. Giving potential new members and members that are considering a change in ownership, control, or business operations the opportunity to review NAC decisions under Rule 1015 will assist applicants in understanding the standards that must be met under Rule 1014 or 1017, as appropriate,

¹ James Antosh (June 30, 2005); Joseph W. Mays, Jr., President, Securities Consulting Group, Inc. (July 5, 2005).

² See Securities Exchange Act Release No. 51786 (June 6, 2005), 70 FR 34170 (June 13, 2005) (Notice of Filing of Proposed Rule Change Relating to the Publication of Any Decision Issued by the National Adjudicatory Council Pursuant to Rule 1015).

and the manner in which such standards are applied. Further, NASD strongly believes that public investors will benefit from the availability of information about any limitations placed on members, where such limitations result from proceedings before the NAC. Under the proposed rule change, NASD will protect the privacy interests of persons who are not themselves under consideration or review as part of the membership application process by not publishing their names. Third, the commenters have failed to consider that the information contained in NAC decisions is already subject to publication if an applicant appeals an adverse NAC decision to the SEC, because the SEC makes its decision in such matters available to the public, including on the SEC's Web site.

NASD disagrees with one commenter's assertion that NASD should not be permitted to release information about persons who may be shareholders of a broker-dealer but who are not otherwise employed by the broker-dealer. The commenter contends that the proposed rule change could cause such shareholders to lose their constitutional right to privacy solely on the basis of owning stock in a broker-dealer, and that the release of information about these shareholders would violate federal statutes that protect the right to confidentiality and privacy. NASD is not aware of any cognizable constitutional or statutory claim other than, as a self-regulatory organization, NASD must comport with its duty of fairness. In this case, the proposed rule change satisfies this duty by furthering a desirable and reasonable regulatory purpose, as discussed in the "Purpose" section of our rule filing.

Upon approval of this proposed rule change, shareholders of broker-dealers who are not otherwise employed by the broker-dealer or engaged in the broker-dealer's business will be on notice that if they meet the definition of "associated person" in Rule 1011(b), their names will be subject to release to the public if the applicant appeals an adverse decision to the NAC. Shareholder status alone would not trigger disclosure under the proposed rule change. Rather, an individual who is not registered with NASD or otherwise engaged in the broker-dealer's business would meet the definition of "associated person" under Rule 1011(b) only if he or she directly or indirectly controls the applicant. Although NASD will consider certain information concerning lenders of 5% or more of the applicant's net capital in determining whether an applicant meets all standards for admission, a change in ownership or control, or a material change in business operations, the definition of "associated person" excludes passive investors who are not control persons of the broker-dealers. Disclosure of an NASD member's control persons is consistent with the public availability of control person information reported on the Uniform Application for Broker-Dealer Registration ("Form BD").

Information about control persons can be a critical part of NASD's consideration of NASD membership applications. NASD's Rule 1000 Series (Membership, Registration and Qualification Requirements) clearly states that NASD will evaluate certain information about the applicant's control persons in deciding whether an applicant should be granted NASD membership or change in ownership, control, or business

Ms. Katherine A. England

July 26, 2005

Page -3-

operations. NASD's overall goals in establishing standards for the approval of membership applications are to protect investors and serve the public interest. *See* Rule 1014(a). NASD believes that when the NAC's decisions are based on information regarding the applicant's control persons, public investors and current members should be allowed to review this information.

NASD believes that the foregoing fully responds to the issues raised by the commenters to the rule filing. Please feel free to call me at (202) 728-8844 if you wish to discuss this further.

Sincerely,

Shirley H. Weiss

cc: Edward Y. Cho