

July 30, 1999

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

Re: File No. SR-NASD-99-35; Amendment To Associated Person Definition

Dear Mr. Strasser:

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 Mary Dunbar, Office of General Counsel, NASD Regulation, Inc., at (202) 728-8252; e-mail dunbarm@nasd.com. The fax number of the Office of General Counsel is (202) 728-8264.

Very truly yours,



T. Grant Callery
Senior Vice President

Enclosure

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) under the Securities Exchange Act of 1934 ("Act"), the National Association of Securities Dealers, ("NASD" or "Association") is filing with the Securities and Exchange Commission ("Commission") a proposed rule change to amend the definition of "person associated with a member" in the By-Laws of the NASD, NASD Regulation, Inc. ("NASD Regulation") and The Nasdaq Stock Market, Inc. ("Nasdaq").

Additions are underlined; deletions are bracketed.

BY-LAWS OF THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

ARTICLE I

* * *

(ee) "person associated with a member" or "associated person of a member" means: (1) a natural person who is registered or has applied for registration under the Rules of the Association; [or] (2) a sole proprietor, partner, officer, director, or branch manager of a member, or [a] other natural person occupying a similar status or performing similar functions, or a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a member, whether or not any such person is registered or exempt from registration with the NASD under these By-Laws or the Rules of the Association; and (3) for purposes of Rule 8210, any other person listed in Schedule A of Form BD of a member;

* * *

The NASD proposes conforming changes to Article I(y) of the NASD Regulation By-Laws and Article I(r) of the Nasdaq By-Laws, respectively.

2. Procedures of the Self-Regulatory Organization

(a) The proposed rule change was approved by the Board of Governors of the NASD at

its meeting on May 27, 1999, which authorized the filing of the rule change with the Commission. The proposed rule change was published for member vote in Notice to Members 99-52. The last day for member vote was July 16, 1999. A majority of members voted in favor of the proposed rule change. No other action by the NASD is necessary for the filing of the proposed rule change. The NASD, as sole stockholder, amended the By-Laws of NASD Regulation and Nasdaq pursuant to Article XIII, Section 13.1 of the NASD Regulation By-Laws and Article XI, Section 11.1 of the Nasdaq By-Laws, respectively.

(b) Questions regarding this rule filing may be directed to Mary M. Dunbar, NASD Regulation, Office of General Counsel, at (202) 728-8252.

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

(a) Purpose

The NASD proposes two amendments to the definition of “person associated with a member” in Article I of the NASD By-Laws, and conforming amendments to the NASD Regulation and Nasdaq By-Laws. The term is currently defined to include: (1) a natural person registered under the Rules of the Association; or (2) a sole proprietor, partner, officer, director, or branch manager of a member, or a natural person occupying a similar status or performing similar functions, or a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a member, whether or not any such person is registered or exempt from registration with the NASD under these By-Laws or the Rules of the Association.

Two issues have arisen with respect to the definition. The first issue is whether the definition should be expanded modestly to apply to certain owners of members. Currently, the definition only includes owners who are natural persons engaged in the member’s investment

banking or securities business and who have a direct or indirect control relationship with the member. The By-Laws do not define the term “control.”¹ While the NASD does not believe that the definition of associated person should include all owners and thereby subject them to all NASD rules, the NASD would like to expand the definition minimally to give the staff authority to direct a request for information under Rule 8210 (“the Rule”) to any person – including a natural person or corporate or other entity – who holds a five percent or greater interest in a member firm, regardless of whether they “control” the member firm or are actively engaged in its securities or investment banking business.

The NASD can easily identify such owners because members must list them in Schedule A of Form BD, which is filed with the NASD and the Commission. For example, if the member is a corporation, the member generally must list each shareholder that directly owns five percent or more of a class of a voting security of the broker/dealer. If the member is a partnership, the member must list all general partners and those limited and special partners that have contributed, or have the right to receive upon dissolution, five percent or more of the partnership’s capital. Members have a continuing obligation to update Schedule A.

The NASD is not recommending any change to the Rule itself, which is one of the staff’s primary tools for carrying out its regulatory responsibilities. The Rule authorizes the staff, for the purpose of an investigation, complaint, examination, or proceeding authorized by the NASD By-Laws or rules, to require a member or associated person to provide information or testimony. The Rule also authorizes the staff to inspect and copy the books, records, and accounts of such

¹ The Form BD defines “control” as the “power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Any person that ... directly or indirectly has the right to vote 25% or more of a class of a voting securities or has the power to sell or direct the sale of 25% or more of a class of voting securities; or ... in the case of a partnership, has the right to receive upon dissolution, or has contributed 25% or more of the capital, is presumed to control that company.”

member or person with respect to any matter involved in the investigation, complaint, examination, or proceeding. The proposed amendment to the definition of associated person represents an incremental change that would permit the staff to direct a Rule 8210 request to any owner – individual, corporate, partnership, trust, or otherwise – listed in Schedule A of Form BD, whether or not such owner controls the member firm. The NASD does not believe that it is necessary at this time to apply any other NASD rules to this group of owners or to amend Rule 8210; however, an owner who falls within the associated person definition but fails to comply with a Rule 8210 request may be disciplined by the NASD.

The second issue involves an anomaly between the By-Law definition of the term “person associated with a member” and the Form U-4, which is the application form for registration that must be signed by the prospective registered person. The Form U-4 states that by signing the Form, the applicant is subject to the jurisdiction of the NASD and any state in which he is applying for registration. However, the current definition does not expressly address applicants for registration. The NASD proposes that the By-Law should be made expressly consistent with the Form U-4 in this respect.

Finally, the word “other” is inserted into subsection 2 of the definition to clarify that the subsection describes only natural persons.

The NASD proposes to make the rule change effective for all members within 45 days after Commission approval. The effective date will be announced at least 15 days in advance in a Notice To Members.

(b) Statutory Basis

The 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 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 change will help it obtain necessary information to conduct its regulatory investigations and proceedings and clarify its jurisdiction over applicants for registration.

4. Self-Regulatory Organization's Statement on Burden on Competition

The 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)

Not applicable.

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

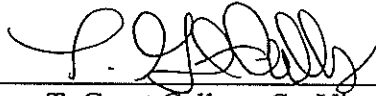
Not applicable.

9. Exhibits

1. Completed notice of proposed rule change for publication in the Federal Register.
2. Notice to Members 99-52.

Pursuant to the requirements of the Securities Exchange Act of 1934, the NASD has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

National Association of Securities Dealers, Inc.

BY: 

T. Grant Callery, Sr. Vice President

Date: July 30, 1999

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-NASD-99-35)
July 30, 1999

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the NASD
Relating to Amendments to Associated Person Definition

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 July 30, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association") 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 the NASD. 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

The NASD is proposing to amend the definition of "person associated with a member" in the By-Laws of the NASD, NASD Regulation, Inc. ("NASD Regulation"), and The Nasdaq Stock Market, Inc. ("Nasdaq"). Additions are underlined; deletions are bracketed.

BY-LAWS OF THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

ARTICLE I

* * *

(ee) "person associated with a member" or "associated person of a member" means: (1) a natural person who is registered or has applied for registration under the Rules of the Association; [or] (2) a sole proprietor, partner, officer, director, or branch manager of a member,

¹ 15 U.S.C. 78s(b)(1)

² 17 C.F.R. 240.19b-4.

or [a] other natural person occupying a similar status or performing similar functions, or a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a member, whether or not any such person is registered or exempt from registration with the NASD under these By-Laws or the Rules of the Association; and (3) for purposes of Rule 8210, any other person listed in Schedule A of Form BD of a member;

* * *

The NASD proposes conforming changes to Article I(y) of the NASD Regulation By-Laws and Article I(r) of the Nasdaq By-Laws, respectively.

II. SELF-REGULATORY ORGANIZATION'S STATEMENT OF THE PURPOSE OF, AND STATUTORY BASIS FOR, THE PROPOSED RULE CHANGE

In its filing with the Commission, the 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. The 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

1. Purpose

The NASD proposes two amendments to the definition of "person associated with a member" in Article I of the NASD By-Laws, and conforming amendments to the NASD Regulation and Nasdaq By-Laws. The term is currently defined to include: (1) a natural person registered under the Rules of the Association; or (2) a sole proprietor, partner, officer, director, or branch manager of a member, or a natural person occupying a similar status or performing similar functions, or a natural person engaged in the investment banking or securities business

who is directly or indirectly controlling or controlled by a member, whether or not any such person is registered or exempt from registration with the NASD under these By-Laws or the Rules of the Association.

Two issues have arisen with respect to the definition. The first issue is whether the definition should be expanded modestly to apply to certain owners of members. Currently, the definition only includes owners who are natural persons engaged in the member's investment banking or securities business and who have a direct or indirect control relationship with the member. The By-Laws do not define the term "control."³ While the NASD does not believe that the definition of associated person should include all owners and thereby subject them to all NASD rules, the NASD would like to expand the definition minimally to give the staff authority to direct a request for information under Rule 8210 ("the Rule") to any person – including a natural person or corporate or other entity – who holds a five percent or greater interest in a member firm, regardless of whether they "control" the member firm or are actively engaged in its securities or investment banking business.

The NASD can easily identify such owners because members must list them in Schedule A of Form BD, which is filed with the NASD and the Commission. For example, if the member is a corporation, the member generally must list each shareholder that directly owns five percent or more of a class of a voting security of the broker/dealer. If the member is a partnership, the member must list all general partners and those limited and special partners that have

³ The Form BD defines "control" as the "power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Any person that ... directly or indirectly has the right to vote 25% or more of a class of a voting securities or has the power to sell or direct the sale of 25% or more of a class of voting securities; or ... in the case of a partnership, has the right to receive upon dissolution, or has contributed 25% or more of the capital, is presumed to control that company."

contributed, or have the right to receive upon dissolution, five percent or more of the partnership's capital. Members have a continuing obligation to update Schedule A.

The NASD is not recommending any change to the Rule itself, which is one of the staff's primary tools for carrying out its regulatory responsibilities. The Rule authorizes the staff, for the purpose of an investigation, complaint, examination, or proceeding authorized by the NASD By-Laws or rules, to require a member or associated person to provide information or testimony. The Rule also authorizes the staff to inspect and copy the books, records, and accounts of such member or person with respect to any matter involved in the investigation, complaint, examination, or proceeding. The proposed amendment to the definition of associated person represents an incremental change that would permit the staff to direct a Rule 8210 request to any owner – individual, corporate, partnership, trust, or otherwise – listed in Schedule A of Form BD, whether or not such owner controls the member firm. The NASD does not believe that it is necessary at this time to apply any other NASD rules to this group of owners or to amend Rule 8210; however, an owner who falls within the associated person definition but fails to comply with a Rule 8210 request may be disciplined by the NASD.

The second issue involves an anomaly between the By-Law definition of the term “person associated with a member” and the Form U-4, which is the application form for registration that must be signed by the prospective registered person. The Form U-4 states that by signing the Form, the applicant is subject to the jurisdiction of the NASD and any state in which he is applying for registration. However, the current definition does not expressly address applicants for registration. The NASD proposes that the By-Law should be made expressly consistent with the Form U-4 in this respect.

Finally, the word "other" is inserted into subsection 2 of the definition to clarify that the subsection describes only natural persons.

The NASD proposes to make the rule change effective for all members within 45 days after Commission approval. The effective date will be announced at least 15 days in advance in a Notice To Members.

2. Statutory Basis

The 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 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 change will help it obtain necessary information to conduct its regulatory investigations and proceedings and clarify its jurisdiction over applicants for registration.

B. Self-Regulatory Organization's Statement on Burden on Competition

The 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.

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. 20549-0609. 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 File No. SR-NASD-99-35 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.⁴

Jonathan G. Katz
Secretary

⁴ 17 CFR 200.30-3(a)(12).

Special NASD Notice to Members 99-52

**Mail Vote—NASD Solicits
Vote On Amendments To
NASD By-Laws To The
Associated Person
Definition; Last Voting
Date: July 16, 1999**

Suggested Routing

- ☒ Senior Management
- ☐ Advertising
- ☐ Continuing Education
- ☐ Corporate Finance
- ☐ Executive Representatives
- ☐ Government Securities
- ☐ Institutional
- ☐ Insurance
- ☐ Internal Audit
- ☒ Legal & Compliance
- ☐ Municipal
- ☐ Mutual Fund
- ☐ Operations
- ☐ Options
- ☐ Registered Representatives
- ☒ Registration
- ☐ Research
- ☐ Syndicate
- ☐ Systems
- ☐ Trading
- ☐ Training
- ☐ Variable Contracts

Executive Summary

The National Association of Securities Dealers, Inc. (NASD*) invites members to vote to approve the following amendments to the NASD By-Laws: amend the definition of "person associated with a member" to include persons who have applied for registration and, for purposes of Rule 8210, certain persons who have ownership interests in NASD members. The last voting date is July 16, 1999. The text of the proposed amendments follows this *Notice*.

Questions concerning this *Notice* may be directed to Mary M. Dunbar, Assistant General Counsel, Office of General Counsel, NASD Regulation, Inc. (NASD Regulation*), at (202) 728-8252.

Background And Discussion

The NASD Board of Governors (the Board) recommends two minor amendments to the definition of the term "person associated with a member" in Article I of the NASD By-Laws. The term is currently defined to include:

(1) a natural person registered under the Rules of the Association; or

(2) a sole proprietor, partner, officer, director, or branch manager of a member, or a natural person occupying a similar status or performing similar functions, or a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a member, whether or not any such person is registered or exempt from registration with the NASD under these By-Laws or the Rules of the Association.

At least two issues have arisen with respect to the definition. The first issue is whether the definition should

be expanded modestly to apply to certain owners of members. Currently, the definition only includes owners who are natural persons engaged in the member's investment banking or securities business and who have a direct or indirect control relationship with the member. The By-Laws do not define the term "control."¹

While the Board does not believe that the definition of associated person should include all owners and thereby subject them to all NASD rules, the Board would like to expand the definition minimally to give the staff authority to direct a request for information under Rule 8210 (the Rule) to any person – including a natural person or corporate or other entity – who holds a five percent or greater interest in a member firm, regardless of whether they "control" the member firm or are actively engaged in its securities or investment banking business. Such persons are easily identified because members must list them in Schedule A of Form BD, which is filed with the NASD and the Securities and Exchange Commission. For example, if the member is a corporation, the member generally must list each shareholder that directly owns five percent or more of a class of a voting security of the broker/dealer. If the member is a partnership, the member must list all general partners and those limited and special partners that have contributed, or have the right to receive upon dissolution, five percent or more of the partnership's capital. Members have a continuing obligation to update Schedule A.

The Board is not recommending any change to the Rule itself, which is one of the staff's primary tools for carrying out its regulatory responsibilities. The Rule authorizes the staff, for the purpose of an investigation, complaint, examination, or proceeding authorized by the NASD By-Laws or

rules, to require a member or associated person to provide information or testimony. The Rule also authorizes the staff to inspect and copy the books, records, and accounts of such member or person with respect to any matter involved in the investigation, complaint, examination, or proceeding. The proposed amendment to the definition of associated person represents an incremental change that would permit the staff to direct a Rule 8210 request to any owner – individual, corporate, partnership, trust, or otherwise – listed in Schedule A of Form BD, whether or not such owner controls the member firm. The Board does not believe that it is necessary at this time to apply any other NASD rules to this group of owners or to amend Rule 8210.

The second issue involves an anomaly between the By-Law definition of the term “associated person” and the Form U-4, which is the application form for registration that must be signed by the prospective registered person. The Form U-4 states that by signing the Form, the applicant is subject to the jurisdiction of the NASD and any state in which he/she is applying for registration. However, the current

By-Law does not expressly address applicants for registration. The Board recommends that the By-Law should be made expressly consistent with the Form U-4 in this respect.

Text Of The Proposed Amendments

(Note: New language is underlined; deletions are bracketed.)

By-Laws Of The NASD, Article 1

(a) – (dd) No Change

(ee) “person associated with a member” or “associated person of a member” means:

(1) a natural person who is registered or has applied for registration under the Rules of the Association; [or]

(2) a sole proprietor, partner, officer, director, or branch manager of a member, or [a] other natural person occupying a similar status or performing similar functions, or a natural person engaged in the investment banking or securities business who is directly or indirectly

controlling or controlled by a member, whether or not any such person is registered or exempt from registration with the NASD under these By-Laws or the Rules of the Association; and

(3) for purposes of Rule 8210, any other person listed in Schedule A of Form BD of a member;

(ff) – (mm) No Change

Endnote

¹The Form BD defines “control” as the “power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Any person that ... directly or indirectly has the right to vote 25% or more of a class of a voting securities or has the power to sell or direct the sale of 25% or more of a class of voting securities; or ... in the case of a partnership, has the right to receive upon dissolution, or has contributed 25% or more of the capital, is presumed to control that company.”

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