

The SIA also suggests the confidentiality provisions of the proposed rules be amended to require the parties to keep confidential any refusal by any party to submit to mediation. The SIA argues that there can be any number of reasons for a party deciding not to mediate and no inference should be drawn from such a decision. The SIA also asks that a party seeking mediation should agree that the refusal of the other party to mediate will not be introduced as evidence into any arbitral, judicial or other proceeding.

The SIA also asks for further consideration about who is the proper party to initiate mediation and whether mediation can be initiated after the first hearing in an arbitration. Finally, the SIA asks that, in order to prevent breaches of the agreement and forestall future litigation on the same issues, a mechanism be created to reduce the agreement to an arbitration award at the request of a party.

The Association believes that the changes in the proposed rules are responsive to the SIA's concerns. Specifically, with respect to the SIA's suggested language, "[t]he mediator will decide when to hold meetings with the parties," the NASD has determined not to adopt the SIA's proposed language. While the NASD understands the SIA's concern about "separate meetings," the NASD believes nevertheless that such separate meetings may be necessary and productive and that the rules should provide for such meetings. The NASD has, however, modified the proposed rules to eliminate any suggestion that such separate meetings would occur prior to the first joint meeting of the parties. In addition, the NASD has determined to eliminate any references to multiple mediators in response to the concerns raised by the SIA.

Associated Securities Corp. (ASC), an NASD member firm, expressed support for the proposed mediation program. ASC also said that mediation by teleconference should not be allowed because personal contacts are important to the mediation process. ASC also said that the mediators should not make enforcement referrals in order to facilitate frank and open discussion with the mediator, during the course of the mediation sessions.

The Association believes that teleconference sessions by the agreement of the parties may be an effective option that should be available to the parties. With respect to disciplinary referrals, mediators as a matter of course do not make such referrals; however, the NASD does not believe it is necessary to specify such a prohibition.

Robert Burke of the San Francisco law firm of Pettit & Martin commented favorably on the proposed mediation rules, but had two suggestions. First, Mr. Burke believes mediators should disclose their association with the NASD as an NASD arbitrator because the mediator's history as an arbitrator could have an adverse effect on the public customer's willingness to accept the mediator's neutrality. Moreover, the NASD should consider whether to include arbitrators in its mediator pool because good arbitrators do not generally make good mediators. Second, Mr. Burke believes the mediator should not draft settlement agreements as the proposed rules permit because in mediation the settlement is the parties', not the mediator's. Moreover, the mediator could inadvertently or by design fail to include a term that had been part of the parties' understanding, potentially resulting in liability for the mediator and the sponsoring organization.

The Association believes that Mr. Burke's comments with respect to arbitrator selection are addressed in the background information acquisition and disclosure process specified in the proposed rule change. With respect to Mr. Burke's second comment the NASD has eliminated that provision from the proposed rule change.

Joan Protes & Associates suggested that the proposed Mediation Program could be made more accommodating by (1) subsidizing some of the mediator's charges, and (2) designating a mediator to invite the parties and their counsel to mediation.

The NASD believes this commenter's comments are related to the NASD's internal management decisions related to the administration of the program and do not require a response. The issues raised, however, remain under continuing consideration.

Lawyers Mediation Service Corporation (LMSC) commented that the proposed Mediation Program should be administered separately from the arbitration program because the two are different in their functions and in their goals.

The mediation and arbitration programs are being administered separately under the single management umbrella of the Arbitration Department.

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 NW., Washington, DC 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 submission should refer to File No. SR-NASD-95-25 and should be submitted by July 6, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,
Deputy Secretary.

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[Release No. 34-35831; File No. SR-NASD-95-13]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Cold Calling Requirements

June 9, 1995.

On April 10, 1995, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed a proposed rule change with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule

¹ 15 U.S.C. 78s(b)(1).

19b-4 thereunder.² The proposed rule change amends Article III, Section 21 of the Rules of Fair Practice³ to include a provision relating to cold calling. Under the rule as amended, each member who engages in telephone solicitation to market its products and services will be required to make and maintain a centralized do-not-call list of persons who do not wish to receive telephone solicitations from such member or its associated persons.

Notice of the proposed rule change, together with its terms of substance, was provided by issuance of a Commission release⁴ and by publication in the **Federal Register**.⁵ This order approves the proposed rule change.

Pursuant to the Telephone Consumer Protection Act ("TCPA"), which became law in 1991, the Federal Communications Commission ("FCC") developed rules to protect the rights of telephone consumers while allowing legitimate telemarketing practices. The FCC rules include a requirement that a person or entity making telephone solicitations must maintain a do-not-call list.

In addition, the Telemarketing and Consumer Fraud and Abuse Prevention Act ("Prevention Act") became law in August 1994, and requires the Federal Trade Commission ("FTC") to adopt rules on abusive cold calling within twelve months. The Prevention Act also requires the SEC to engage in its own rulemaking or, alternatively, to require the self-regulatory organizations ("SROs") to promulgate telemarketing rules consistent with the legislation.

In August 1994, SEC Chairman Arthur Levitt wrote a letter urging the NASD and the other SROs to adopt rules similar to the cold calling rule established by the FCC. Since then, there have been ongoing discussions between the Commission and SROs on the structure of a rule or rules to apply pursuant to the Prevention Act.

The Commission has determined to approve the NASD's proposal. The Commission believes that the rule change is a good first step in the effort to protect against abusive cold calling. In fact, the Commission has recently approved a substantially similar proposal filed by the New York Stock Exchange.⁶ The Commission believes that the proposed rule change is consistent with the Prevention Act as

well as the FCC rules concerning restrictions on telephone solicitations.

The Commission finds that the rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, including the requirements of Section 15A(b)(6) of the Act.⁷ Section 15A(b)(6) requires, in part, that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; and, in general, to provide for the protection of customers and the public interest. The proposed rule change addresses the practices of members that make telemarketing calls. Members will be required to maintain centralized do-not-call lists. The maintenance of such lists is a first step toward establishing standards designed to protect persons against abusive telemarketing practices.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR-NASD-95-13 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

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DEPARTMENT OF STATE

[Public Notice 2222]

Bureau of Oceans and International Environmental and Scientific Affairs; U.S. National Committee for the Man and the Biosphere Program (U.S. MAB) Requests for Proposals for an Environmental Project

The United States Man and the Biosphere Program hereby announces its request for proposals for a Coordinator for the Integration of Youth and Environmental Projects including Biodiversity Conservation, Global Climate Change, Desertification, and Environmental Education to assist in development of Peace Corps Worldwide Environmental Projects by providing technical assistance including but not limited to the following description.

U.S. MAB will accept proposals of a maximum length of six (6) pages that outline how the objectives described below could be accomplished.

A curriculum vitae (C.V.) of a maximum length of four (4) pages for each principal(s), that clearly

demonstrates a history of competency in the implementation of such tasks, must accompany the proposal.

Proposals may not request more than the sum of sixty-four thousand, six hundred and twelve (\$64,612) dollars to implement this initiative.

All proposals must specify that all tasks will be completed at the headquarters of the U.S. Peace Corps and field offices during the period of July 31, 1995 through July 30, 1996.

Payments will be made on a quarterly basis.

All proposals and accompanying documents must be received by the U.S. MAB Secretariat no later than the close of business (COB) on July 24, 1995. Proposals and C.V.'s will be evaluated on the criteria noted in the following section.

Selection will be made no later than July 31, 1995.

Objectives

- Provide technical support to Peace Corps Volunteers (PCVs) who are taking part in environment and youth projects as primary or secondary assignments including, but not limited to:

- Taking part in approximately 6-9 consultancies in response to requests from Peace Corps posts for technical assistance in project development, training activities, project evaluation, and other activities.
- Developing In-Service Training (IST), Pre-Service Training (PST) and Monitoring and Evaluation models for PCVs and their host country counterparts working in youth and environmental education projects. Assist with country implementation of ISTs based on these models.
- Assisting with other environmental education activities including collaboration with other governmental and private agencies offering assistance to Peace Corps in project development and training.

- Provide technical support to Associate Peace Corps Directors (APCDs) responsible for youth and Environment programs by:

- Planning, designing, and implementing regional and subregional workshops for APCDs and their host country counterparts aimed at strengthening their ability to develop and manage quality youth projects;
- Responding to individual APCD requests for technical assistance in the design and management of environment projects.

- Assist with the ongoing collaboration between the Youth Sector and other sectors within the Office of

² 17 CFR 240.19b-4.

³ *NASD Manual*, Rules of Fair Practice, Article III, Sec. 21, (CCH) ¶ 2171.

⁴ Securities Exchange Act Release No. 35657 (May 1, 1995).

⁵ 60 FR 22529 (May 8, 1995).

⁶ Securities Exchange Act Release No. 35821 (June 7, 1995).

⁷ 15 U.S.C. 78o-3(b)(6).

⁸ 17 CFR 200.30-3(a)(12).