

[Release No. 34-37994; File No. SR-NASD-96-38]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Release of Additional Information Regarding Disciplinary History of Members and Their Associated Persons Via Toll-Free Telephone Listing

November 27, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 25, 1996¹ NASD Regulation, Inc. ("NASDR") 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 NASDR. 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

NASDR is proposing to amend the Interpretation on the Release of Disciplinary Information, IM-8310-2 of the Procedural Rules of the National Association of Securities Dealers, Inc. ("NASD" or "Association"), to include additional information required to be reported on the revised Forms BD and U-4. Below is the text of the proposed rule change. Proposed new language is in italics.

IM-8310-2. Release of Disciplinary Information

(a) The Association shall, in response to a written inquiry, *electronic inquiry* or telephonic inquiry via a toll-free telephone listing, release certain information as contained in its files regarding the employment and disciplinary history of members and their associated persons, including information regarding past and present employment history with Association members; all final disciplinary actions taken by federal or state or foreign securities agencies or self-regulatory organizations that relate to securities or commodities transactions; all pending disciplinary actions that have been taken by federal or state securities agencies or self-regulatory organizations that relate to securities and commodities transactions and are required to be reported on Form BD or U-4 and all foreign government or self-regulatory organization disciplinary actions that are

securities or commodities related and are required to be reported on Form BD or U-4; and all criminal indictments, informations or convictions that are required to be reported on Form BD or Form U-4. The Association will also release information *required to be reported on Form BD or Form U-4* concerning civil judgments and arbitration decisions in securities and commodities disputes involving public customers, *pending and settled customer complaints, arbitrations and civil litigation, current investigations involving criminal or regulatory matters, terminations of employment after allegations involving violations of investment related statutes or rules, theft or wrongful taking of property, bankruptcies less than ten (1) years old, outstanding judgements or liens, any bonding company denial, pay out or revocation, and any suspension or revocation to act as an attorney, accountant or federal contractor.*

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 NASDR 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 NASDR 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

This proposed rule change will permit the NASD to release additional information contained in the Central Registration Depository ("CRD") System regarding the disciplinary history of its members and their associated persons in response to a written, electronic inquiry or telephonic inquiry via its existing toll-free telephone listing which is included in the "Public Disclosure Program" ("Program"). The NASD presently has in place its toll-free telephone listing, which was approved by the Commission in April 1992 and which was amended in July 1993.² Under the Program as amended, the NASD reports the past and present employment history of associated persons with NASD members, pending and final disciplinary actions taken by foreign, federal or state securities agencies or self-regulatory organizations which relate to securities or

commodities transactions, criminal indictments, informations or convictions required to be reported on Form BD or Form U-4, and civil judgment and arbitration decisions in securities and commodities disputes involving public customers. In addition to the existing toll-free service, the NASD plans to provide a Public Disclosure Form on its World Wide Web site. Investors using the form will be able to request the same information accessible from the toll-free number. The NASD also plans to add the capability of responding via e-mail to such requests.

The proposed rule change will allow the NASD to release all information on any question on page 3 (Question 22) of the revised Form U-4 and Question 11 of the revised Form BD. The SEC approved the revised Forms U-4 and BD in July 1996.³ The revised Forms U-4 and BD will be used when the new CRD system becomes operational in the spring of 1997. The additional information to be disclosed includes:

1. All pending arbitrations and civil proceedings that relate to securities or commodities transactions;
2. Pending written customer complaints alleging sales practice violations and compensatory damages of \$5,000 or more;
3. Settlements of \$10,000 or more of arbitrations, civil suits and customer complaints involving securities or commodities transactions;
4. Current investigations involving criminal or regulatory matters;
5. Terminations of employment after allegations involving violations of investment-related statutes or rules, fraud, theft or failure to supervise investment-related activities;
6. Bankruptcies less than 10 years old and outstanding liens or judgments;
7. Bonding company denials, payouts or revocations; and
8. Any suspension or revocation to act as an attorney, accountant or federal contractor.

The revised Form U-4 will require the reporting of all written customer complaints that allege sales practice rule violations and compensatory damages of \$5,000 or more. The definition of sales practice violations will be included in the "Explanation of Terms" section of the forms but will generally include any allegations concerning a violation of applicable Commission, self-regulatory organization or state securities rules. Under the revised Forms U-4 and U-5, written complaints that do not evolve into arbitration, civil litigation or a

¹ The NASDR filed Amendment No. 1 to supersede the filing submitted on October 17, 1996. See letter from Joan C. Conley, Corporate Secretary, NASDR, to Katherine A. England, Esq., Assistant Director, Division of Market Regulation, SEC, dated November 25, 1996.

² See Securities Exchange Act Rel. No. 30629 (April 23, 1992), 57 FR 18535 (April 30, 1992); and Securities Exchange Act Rel. No. 32568 (July 1, 1993), 58 FR 36723 (July 8, 1993).

³ See Securities Exchange Act Rel. No. 37407 (July 5, 1996), 61 FR 36595 (July 11, 1996); and Securities Exchange Act Rel. No. 37431 (July 12, 1996), 61 FR 37357 (July 18, 1996). See also Securities Exchange Act Rel. No. 37632 (September 4, 1996), 61 FR 47412 (September 9, 1996).

settlement over the jurisdictional amount, would be deleted from the CRD system two years from the date of the report to the complaint to the CRD system. Dismissed or withdrawn arbitration or civil proceedings would also be deleted. All arbitration and civil litigation proceedings involving securities transaction matters and all settlements of \$10,000 or more would be reported.

Because there are differences in the information required to be disclosed in the existing and revised Form U-4 and because the revised Form U-4 will not be utilized until the new CRD system is operational in 1997, the proposed changes to the Program will be implemented in two phases. In the first phase, starting with implementation of the proposed disclosure changes in calendar 1996 until the new CRD system is operational, the NASD will review each member's and associated person's existing CRD record against the revised Question 22 on page 3 of Form U-4 and disclose any information that is available to the NASD at that time. The revised Form U-4 will require the reporting of certain written customer complaints that are not required to be reported on the existing Form U-4. Since these "new" complaints are not presently required to be reported, these complaints will not be available for disclosure until the revised Form U-4 is in use. In phase two, beginning with the operation of the new CRD system (expected to be in spring 1997), the NASD will disclose all information required to be disclosed in revised Question 22 on page 3.

The NASD believes the proposed rule change is consistent with Sections 15A(b)(6)⁴ and 15A(i)⁵ of the Act. The NASD believes the proposed rule change will further the goals of these sections of the Act because the increased disclosure will enhance the general public's access to information that will help investors determine whether or not to conduct or continue to conduct business with an NASD member or any of the member's associated persons. The NASD also recognizes the growth in information technology and its customers' increased use thereof; thus, the proposed rule

⁴ Section 15A(b)(6) requires that the Association amend its rules to prevent fraudulent and manipulative acts and practices, to remove impediments to and perfect the mechanism of a free and open market, and in general, to protect investors and the public interest.

⁵ Section 15A(i) requires the Association to: (1) Establish and maintain a toll-free telephone listing to receive inquiries regarding disciplinary actions involving its members and their associated persons, and (2) promptly respond to such inquiries in writing.

change attempts to accommodate investors by making access to information as convenient as possible.

(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 December 26, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,
Deputy Secretary.

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⁶ 17 CFR 200.30-3(a)(12).

[Release No. 34-38008; File No. SR-NASD-96-43]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to Implementation of the SEC's Order Handling Rules

December 2, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 18, 1996, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") 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

The NASD is submitting this rule filing to amend a variety of NASD rules and The Nasdaq Stock Market's ("Nasdaq") Small Order Execution System ("SOES") and SelectNet Service to conform to the Commission's new limit order display rule, Rule 11Ac1-4 under the Act¹ ("Display Rule") and amendments to Rule 11Ac1-1(c)(5) under the Act² ("ECN Rule"). These amendments are also being proposed to reflect the order-driven nature of the Nasdaq market that will be brought about by implementation of the Display Rule and ECN Rule. Proposed new language is in italics. Deleted language is in brackets.

Marketplace Rules

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4613. *Character of Quotations*

(a) Two-Sided Quotations

(1) For each security in which a member is registered as a market maker, the member shall be willing to buy and sell such security for its own account on a continuous basis and shall enter and maintain two-sided quotations in The Nasdaq Stock Market, subject to the procedures for excused withdrawal set forth in Rule 4619.

(A) *If a market maker updates the price of its bid or offer without any accompanying update to the size of such bid or offer, the size of the updated*

¹ 17 CFR 240.11Ac1-4.

² 17 CFR 240.11Ac1-1.