

not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter times as the Commission may designate if consistent with the protection of investors and the public interest; and the Exchange has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6).

The Exchange has requested that the Commission accelerate the operative date of the proposal. In addition, the Exchange provide the Commission with notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, more than five business days prior to the date of the filing of the proposed rule change.

The Commission finds that it is appropriate to accelerate the operative date of the proposal and designate the proposal to become effective today.<sup>8</sup> The Commission has approved similar proposals filed by the other options exchange.<sup>9</sup> Approval of this proposal on an accelerated basis will enable the Exchange to compete on an equal basis with these other exchanges and thus is consistent with Section 6(b)(8) of the Act.<sup>10</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the Act.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written

<sup>8</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>9</sup> See Securities Exchange Act Release No. 43938 (February 7, 2001), 66 FR 10539 (February 15, 2001) (approving SR-Amex-01-03); and Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000) (approving application of ISE for registration as a national securities exchange).

<sup>10</sup> 15 U.S.C. 78f(b)(8).

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 Section. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to file number SR-CBOE-2001-20 and should be submitted by June 5, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01-12135 Filed 5-14-01; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44281; File No. SR-NASD-00-69]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change to Establish a New Registration Category: Limited Representative—Private Securities Offerings (Series 82)

May 8, 2001.

#### I. Introduction

On November 28, 2000, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned subsidiary, NASD Regulation, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and rule 19b-4 thereunder,<sup>2</sup> a proposed rule change seeking to amend rule 1032 of the NASD to establish a new registration category, Limited Representative—Private Securities Offerings (Series 82). The proposed rule change was developed to implement Section 203 of the Gramm-Leach-Bliley Act of 1999 ("GLBA"), which becomes effective on May 12, 2001.<sup>3</sup> NASD Regulation also proposed clerical changes to rule 1032, essentially

<sup>11</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 CFR 240.19b-4

<sup>3</sup> Gramm-Leach-Bliley Act of 1999, Pub. L. No. 106-102, 113 Stat. 1338 (1999).

replacing the word "described" for the word "prescribed." NASD Regulation filed Amendment No. 1 to the proposed rule change on February 28, 2001.<sup>4</sup> Amendment No. 1 replaces the proposed rule change in its entirety. On March 14, 2001, NASD Regulation filed Amendment No. 2 to the proposed rule change.<sup>5</sup> Notice of the proposed rule change appeared in the **Federal Register** on March 28, 2001.<sup>6</sup> The Commission received no comments on the proposal. This order approves the proposed rule change.

#### II. Description of the Proposal

NASD Regulation is proposing to amend Rule 1032 of the NASD to implement Section 203 of GLBA. Section 203 adds subsection (j) to Section 15A of the Act, which requires that the NASD, as a registered securities association, create a limited registration category for any associated person of a member whose investment banking and securities business is limited solely to effecting sales of private securities offerings. Section 203 also states that any bank employee who during the six-month period prior to the enactment of GLBA (*i.e.*, from May 12, 1999 to November 12, 1999) engaged in effecting such sales shall not be required to pass a qualification examination in order to be deemed qualified in the limited registration category. Section 203 becomes effective on May 12, 2001.

GLBA also establishes functional regulation, meaning that each industry segment of a multi-industry organization will be regulated by the agency charged by law with the regulation of that industry. In connection with functional regulation, GLBA eliminates the long-standing general exclusion for banks from the definitions of "broker" and "dealer" under the Act and instead provides exclusions for certain bank activities. With respect to private placement activity, GLBA permits private placements to be effected in a bank (that is not a broker or dealer) where (a) the bank is not affiliated with a broker or dealer that is engaged in dealing, market

<sup>4</sup> See letter from Jeffrey S. Holik, Vice President and Acting General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated February 28, 2001 ("Amendment No. 1"). Amendment No. 1 was filed to address SEC staff comments and to make certain clarifications.

<sup>5</sup> See letter from Gary L. Goldsholle, Associate General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division, Commission, dated March 14, 2001 ("Amendment No. 2"). Amendment No. 2 was filed to address SEC staff comments and to make further clarifications.

<sup>6</sup> See Release No. 34-44091 (March 21, 2001), 66 FR 16964 (March 28, 2001).

making, or underwriting, other than with respect to exempted securities and (b), if the bank is not affiliated with any broker or dealer, the aggregate dollar amount of any private placement offering (excluding government or municipal securities) does not exceed 25% of the bank's capital. A bank that meets these conditions will be eligible to engage in private placement activities without having to register its personnel with the NASD. Notwithstanding this exclusion, many banks will be required to effect private securities offerings in a registered broker/dealer. For banks that are not excluded from the definition of "broker," employees that effect sales of private securities offerings will be required to become associated persons of a registered broker/dealer, and as such, will be subject to NASD qualification examination and other requirements.

As part of the effort to facilitate a smooth transition of private placement activities from banks to broker/dealers, GLBA creates a new limited registration category for persons engaging solely in sales of private securities offerings. As noted above, while certain banks will still be permitted to engage in private securities offerings, many others will be required to effect these sales in a registered broker/dealer with appropriately registered personnel.

The proposed rule change effectuates the provisions of Section 203 by establishing a new registration category for persons engaged solely in sales of private securities offerings through a registered broker/dealer. Applicants seeking to register with the NASD under this limited registration category must meet the eligibility criteria for associated persons of a member in the NASD By-Laws and pass the necessary qualification examination. However, consistent with GLBA, the proposed rule change provides that any person who engaged in sales of private securities offerings as an employee of a bank during the period from May 12, 1999 to November 12, 1999, is not required to complete the qualification examination. An applicant seeking exemption from the qualification examination pursuant to this provision will be required to provide such evidence as NASD Regulation determines to be appropriate, demonstrating that he or she was engaged in effecting sales of private securities offerings at the bank during the period from May 12, 1999 to November 12, 1999.

The new limited registration category permits a person to effect sales of private securities offerings. However, the new limited registration category

does not permit a person to effect sales of municipal or government securities or equity interests in or the debt of direct participation programs ("DPP securities"). Although sales of municipal securities and DPP securities may involve private securities offerings, NASD Regulation does not believe that the limited registration category should allow persons to sell such securities. Persons who effect sales of municipal securities, including bank employees, currently are required to be qualified in accordance with the rules of the Municipal Securities Rulemaking Board ("MSRB"). MSRB rules, among other things, require that persons pass a specific qualification examination. NASD Regulation does not believe that the new limited registration category was intended to create a subcategory of persons that are eligible to engage in certain offerings of municipal securities without meeting the specific qualification requirements of the MSRB.

Based upon conversations with SEC staff, NASD Regulation has included language in the proposed rule change to exclude from the scope of the limited registration category the ability to effect sales of private placements of government securities. With respect to government securities, NASD Regulation already offers a limited registration category for persons involved in the solicitation, purchase or sale of government securities.<sup>7</sup> Moreover, although neither NASD Regulation nor the SEC staff currently is aware of any private offerings of government securities, the SEC believes that it is important to exclude government securities from the limited registration category, similar to the exclusion for municipal securities given the manner in which these products are addressed in the GLBA.

The new limited registration category also does not qualify a person to engage in offerings of DPP securities. In general, DPP securities are specialized programs that provide for flow-through tax consequences. Any person who wishes to effect sales of DPP securities is required as a general securities representative or under a limited registration category for DPP securities.<sup>8</sup> Based upon conversations with banking industry representatives, NASD Regulation does not believe that unregistered bank employees generally effect sales of DPP securities. In view of the highly specialized nature of DPP securities, the existence of a limited registration category for such securities, and the general lack of experience in

such securities by unregistered bank personnel, NASD Regulation does not believe that the new limited registration category should qualify an associated person to sell DPP securities. Moreover, by eliminating DPP securities from the scope of the new limited registration category, the qualification examination will not be burdened with questions on these highly specialized products. However, with respect to current bank employees who may be eligible to register under the new limited registration category without taking the qualification examination pursuant to paragraph (h)(2) of the proposed rule change, NASD Regulation staff has exemptive authority under NASD Rule 1070 and under such authority will consider on a case-by-case basis whether a bank employee with experience in DPP securities registering with a broker/dealer should be authorized to effect sales of DPP securities without having to complete the general securities representatives or specific DPP securities limited qualification examination.

The new limited registration category permits persons only to effect sales of private placement securities as part of a primary offering. As such, persons registered in this category will not be permitted to effect resales of or secondary market transactions in private placement securities. Any person wishing to effect resales of or secondary market transactions in private placement securities will be required to register as a General Securities Representative, or, where appropriate, as a Limited Representative—Corporate Securities.

NASD Regulation staff has developed a qualification examination and has filed the study outline and specifications with the Commission under separate cover.<sup>9</sup>

NASD Regulation also is making several clerical changes to Rule 1032, replacing the word "described" for the word "prescribed." This change more accurately reflects the intended meaning of the affected paragraphs.

### III Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, with the requirements of Sections 15A(b)(6), 15A(g)(3), and 15A(j) of the Act.<sup>10</sup> Section 15A(b)(6)

<sup>9</sup> See Release No. 34-44228 (April 27, 2001), 66 FR 22624 (May 4, 2001).

<sup>10</sup> 15 U.S.C. 78o-3(b)(6), 78o-3(g)(3), and 78o-3(j) (the latter as enacted in 1999 through Section 203

<sup>7</sup> See NASD Rule 1032(g).

<sup>8</sup> See NASD Rule 1032(c).

requires, in relevant part, that the rules of a registered securities association be designated to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest. Section 15A(g)(3) provides that a registered securities association may deny membership to, or condition the membership of, a registered broker or dealer if such broker or dealer does not meet the requisite levels of knowledge and competence. Section 15A(j) (as enacted)<sup>11</sup> provides that a registered securities association shall create a limited qualification category for any associated person of a member who effects sales as part of a primary offering of securities not involving a public offering, pursuant to Section 3(b), 4(2), or 4(6) of the Securities Act of 1933 and the rules and regulations thereunder, and shall deem qualified in such limited qualification category, without testing, any bank employee who, within the six month period preceding the date of the enactment of the GLBA, engaged in effecting such sales.

#### IV. Conclusion

For the above reasons, the Commission finds that the proposed rule change is consistent with the provisions of the Act, in general, and with Sections 15A(b)(6), 15A(g)(3), and 15A(j) in particular.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change, SR-NASD-00-69, be and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01-12134 Filed 5-14-01; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44280; File No. SR-NASD-2001-06]

### Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendments No. 3 and No. 4 by the National Association of Securities Dealers, Inc. Amending the NASD By-Laws

May 8, 2001.

#### I. Introduction

On January 18, 2001, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change amending the NASD By-Laws.<sup>3</sup> On February 5, 2001, the NASD submitted Amendment No. 1 to the proposed rule change.<sup>4</sup> On February 26, 2001, the NASD submitted Amendment No. 2 to the proposed rule change.<sup>5</sup> The proposed rule change was published for comment in the **Federal Register** on March 6, 2001.<sup>6</sup> On April 20, 2001, the NASD submitted Amendment No. 3 to the proposed rule change.<sup>7</sup> On May 7, the NASD

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> The Commission notes that NASD's proposal, as published in the Federal Register for notice and public comment, contained an erroneous filing date. The correct date on which NASD filed File No. SR-NASD-2001-06 with the Commission, as noted above, was January 18, 2001.

<sup>4</sup> Letter from T. Grant Callery, Senior Vice President and General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated February 2, 2001 ("Amendment No. 1"). In Amendment No. 1 the NASD provided the final ballot summary of the membership vote regarding the proposed amendments to the NASD By-Laws, indicating that the NASD membership approved the proposed amendments.

<sup>5</sup> Letter from T. Grant Callery, Senior Vice President and General Counsel, NASD, to Katherine A. England, Assistant Director, Division, Commission, dated February 23, 2001 ("Amendment No. 2"). In Amendment No. 2 the NASD amended proposed Article VII, Section 10(a)(ii) of the By-Laws to state "(ii) in the case of petitions in support of more than one person, petitions in support of the nominations of such persons duly executed by ten percent of the members."

<sup>6</sup> Securities Exchange Act Release No. 44004 (February 26, 2001), 66 FR 13601 (March 6, 2001).

<sup>7</sup> Letter from T. Grant Callery, Senior Vice President and General Counsel, NASD, to Katherine A. England, Assistant Director, Division, Commission, dated April 19, 2001 ("Amendment No. 3"). In Amendment No. 3 the NASD amended proposed Article VII, Section 11(b) of the By-Laws to clarify its proposed rules regarding National Nominating Committee ("NNC") participation in contested Board elections by stating that the NNC

submitted Amendment No. 4 to the proposed rule change.<sup>8</sup>

The Commission received no comments on the proposal.<sup>9</sup> This order approves the proposed rule change, as amended. In addition, the Commission is publishing this notice to solicit comments on Amendments No. 3 and No. 4 and is simultaneously approving Amendments No. 3 and No. 4 on an accelerated basis.

#### II. Description of the Proposal

In its proposed rule change, NASD proposed amendments to its By-Laws to address several corporate governance issues, including the treatment of staff Governors as "neutral" for purposes of Industry/Non-Industry balancing on the NASD's Board of Governors (the "Board"); the role of the national Nominating Committee ("NNC") in contested elections; the petition process by which individuals and slates can be included in the election process; the Industry classifications that must be represented on the Board; and other clarifying amendments, including the addition of certain definitions and changes to conform certain provisions of the NASD By-Laws to Delaware law and the deletion of terms that are no longer applicable. Additionally, the amendments reflect the new NASD corporate structure, including the creation of NASD Dispute Resolution, Inc., a wholly owned subsidiary of the NASD.

may support its nominees by sending up to two mailings on their behalf "in lieu of mailings sent by its candidates under Article VII, Section 12."

<sup>8</sup> Letter from T. Grant Callery, Senior Vice President and General Counsel, NASD, to Katherine A. England, Assistant Director, Division, Commission, dated May 7, 2001 ("Amendment No. 4"). In Amendment No. 4, the NASD amended the following sections of its By-laws to remove proposed deletions to the term "Nasdaq" contained in its original filing: Article IV, Section 1(a)(1); Article V, Section 2(a)(1); Article VI, Section 1; Article VII, Section 1(c); Article XIII, Section 1(b); and Article XV, Section 4(b). In addition, NASD withdrew its proposed modification to Article VII, Section 3(a) in its entirety.

<sup>9</sup> The Commission was forwarded one item of email correspondence relating to the substance of this proposal. See email from Robert Glauber, CEO and President, NASD to Arthur Levitt, Chairman, Commission, on December 26, 2000, incorporating email from Alan Davidson, President, Independent Broker-Dealer Association, dated December 21, 2000, responding to the NASD's correspondence to its members about the proposed changes to its By-Laws referenced in this proposal. The commenter opposed the NASD's proposed rule change, as originally proposed, specifically the portion of the proposal allowing limited NNC participation in contested elections. The commenter argued that the purpose of the NNC is to nominate, not to use its official capacity to support candidates for the NASD Board. The commenter argued that the NASD Board was effectively manipulating the election process by allowing an appointed (as opposed to an elected) committee to campaign in favor of certain candidates.

of GLBA and effective on May 12, 2001. See note, 3, *supra*.)

<sup>11</sup> See note 10, *supra*.

<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</sup> 17 CFR 200.30-3(a)(12).