

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>20</sup> and subparagraph (f)(3) of Rule 19b-4<sup>21</sup> thereunder because it is concerned solely with the administration of the self-regulatory organization. At any time within 60 days of the filing of such 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 purposes of the Act.<sup>22</sup>

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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 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 the filing will also be available for inspection and copying at the principal office of the Association. All submissions should refer to File No. SR-NASD-2002-64 and should be submitted by July 9, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>23</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46067; File No. SR-NASD-2002-04]

#### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Amendments to Rule 3010(b)(2) and IM-8310-2

June 12, 2002.

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> notice is hereby given that on January 7, 2002, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly owned subsidiary, NASD Regulation, Inc. ("NASD Regulation") 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 NASD Regulation. On May 31, 2002, NASD filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to amend NASD Rule 3010(b)(2), also known as the "Taping Rule," and NASD IM-8310-2. The proposed amendments to the Taping Rule generally would: (1) Permit firms that become subject to the Taping Rule a one time opportunity to adjust their staffing levels to fall below the prescribed threshold levels and thus avoid application of the Rule; (2) revise the criteria by which firms become subject to the Taping Rule by not including certain short-term employees of disciplined firms into the calculations of the Taping Rule threshold levels; (3) expand the compliance deadline from 30 to 60 days for firms subject to the Taping Rule to install taping systems; (4) clarify the staff's authority to grant exemptions from the Rule pursuant to the Rule 9600 Series only in exceptional cases; and (5) extend the taping requirements from two years to three years to eliminate conflicting time periods in the Taping Rule. In addition, NASD Regulation proposes amendments to NASD IM-

8310-2 to permit, upon request, public disclosure of whether a particular firm is subject to the Taping Rule. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in [brackets].

\* \* \* \* \*

#### 3010. Supervision

- (a) No Change.
- (b) Written Procedures.
  - (1) No Change.
  - (2) Tape recording of conversations.

(A) [(i)] Each member that either is notified by NASD Regulation or otherwise has actual knowledge that it meets one of the criteria in paragraph (b)(2)(H)[(viii)] relating to the employment history of its registered persons at a Disciplined Firm as defined in paragraph (b)(2)(J)[(x)] shall establish, maintain, and enforce special written procedures for supervising the telemarketing activities of all of its registered persons.

(B)[(ii)] The member must establish *and implement* the supervisory procedures required by this paragraph within [30] 60 days of receiving notice from NASD Regulation or obtaining actual knowledge that it is subject to the provisions of this paragraph.

*A member that meets one of the criteria in paragraph (b)(2)(H) for the first time may reduce its staffing levels to fall below the threshold levels within 30 days after receiving notice from NASD Regulation pursuant to the provisions of paragraph (b)(2)(A) or obtaining actual knowledge that it is subject to the provisions of the paragraph, provided the firm promptly notifies the Department of Member Regulation, NASD Regulation, in writing of its becoming subject to the Rule. Once the member has reduced its staffing levels to fall below the threshold levels, it shall not rehire a person terminated to accomplish the staff reduction for a period of 180 days. On or prior to reducing staffing levels pursuant to this paragraph, a member must provide the Department of Member Regulation, NASD Regulation with written notice, identifying the terminated person(s).*

(C) [(iii)] The procedures required by this paragraph shall include tape-recording all telephone conversations between the member's registered persons and both existing and potential customers.

(D) [(iv)] The member shall establish reasonable procedures for reviewing the tape recordings made pursuant to the requirements of this paragraph to ensure compliance with applicable securities laws and regulations and applicable rules of [this] *the* Association. The procedures must be appropriate for the

<sup>20</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>21</sup> 17 CFR 240.19b-4(f)(3).

<sup>22</sup> Because the Form 19b-4 submitted on May 16, 2002 was not complete, the proposed rule change was not considered filed. The proposed rule change became effective on June 3, 2002, the date on which Amendment No. 1 was filed with the Commission. In addition, for purposes of calculating the 60-day abrogation date, the Commission considers the 60-day period to have commenced on June 3, 2003, the date Nasdaq filed Amendment No. 1.

<sup>23</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See letter from Grace Yeh, Assistant General Counsel, NASD Regulation, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated May 31, 2002.

member's business, size, structure, and customers.

(E) [(v)] All tape recordings made pursuant to the requirements of this paragraph shall be retained for a period of not less than three years from the date the tape was created, the first two years in an easily accessible place. Each member shall catalog the retained tapes by registered person and date.

(F) [(vi)] Such procedures shall be maintained for a period of [two] three years from the date that the member establishes and implements the procedures required by the provisions of this paragraph.

(G) [(vii)] By the 30th day of the month following the end of each calendar quarter, each member firm subject to the requirements of this paragraph shall submit to the Association a report on the member's supervision of the telemarketing activities of its registered persons.

(H) [(viii)] The following members shall be required to adopt special supervisory procedures over the telemarketing activities of their registered persons:

- A firm with at least five but fewer than ten registered persons, where 40% or more of its registered persons have been [employed by] associated with one or more Disciplined Firms in a registered capacity within the last three years;

- A firm with at least ten but fewer than twenty registered persons, where four or more of its registered persons have been [employed by] associated with one or more Disciplined Firms in a registered capacity within the last three years;

- A firm with at least twenty registered persons, where 20% or more of its registered persons have been [employed by] associated with one or more Disciplined Firms in a registered capacity within the last three years.

For purposes of the calculations required in subparagraph (H), firms should not include registered persons who:

(1) have been registered for an aggregate total of 90 days or less with one or more Disciplined Firms within the past three years; and

(2) do not have a disciplinary history.

(I) [(ix)] For purposes of this Rule, the term "registered person" means any person registered with the Association as a representative, principal, or assistant representative pursuant to the Rule 1020, 1030, 1040, and 1110 Series or pursuant to Municipal Securities Rulemaking Board ("MSRB") Rule G-3.

(J) [(x)] For purposes of this Rule, the term "disciplined firm" means a member that, in connection with sales

practices involving the offer, purchase, or sale of any security, has been expelled from membership or participation in any securities industry self-regulatory organization or is subject to an order of the Securities and Exchange Commission revoking its registration as a broker/dealer.

(K) [(xi)] For purposes of this Rule, the term "disciplinary history" means a finding of a violation by a registered person in the past five years by the Securities and Exchange Commission, a self-regulatory organization, or a foreign financial regulatory authority of one or more of the provisions (or comparable foreign provision) listed in IM-1011-1 or rules or regulations thereunder.

(L) Pursuant to the Rule 9600 Series, the Association may in exceptional circumstances, taking into consideration all relevant factors, exempt any member unconditionally or on specified terms and conditions from the requirements of this paragraph [upon satisfactory showing that the member's supervisory procedures ensure compliance with applicable securities laws and regulations and applicable rules of the Association].

\* \* \* \* \*

**IM-8310-2. Release of Disciplinary [Information] and Other Information Through the Public Disclosure Program**

(a) In response to a written inquiry, electronic inquiry, or telephonic inquiry via a toll-free telephone listing, the Association shall release certain information contained in the Central Registration Depository regarding a current or former member, an associated person, or a person who was associated with a member within the preceding two years, through the Public Disclosure Program. Such information shall include:

(1) the person's employment history and other business experience required to be reported on Form U-4;

(2) currently approved registrations for the member or associated person;

(3) the main office, legal status, and type of business engaged in by the member; and

(4) an event or proceeding—

(A) required to be reported under Item 23 on Form U-4;

(B) required to be reported under Item 11 on Form BD; or

(C) reported on Form U-6.

The Association also shall make available through the Public Disclosure Program certain arbitration decisions against a member involving a securities or commodities dispute with a public customer. In addition, the Association shall make available in response to

telephonic inquiries via the Public Disclosure Program's toll-free telephone listing whether a particular member is subject to the provisions of Rule 3010(b)(2). The Association shall not release through the Public Disclosure Program social security numbers, residential history information, or physical description information, or information that the Association is otherwise prohibited from releasing under Federal law.

(b) through (l) No Change.

\* \* \* \* \*

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

In its filing with the Commission, NASD Regulation 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. NASD Regulation 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 Taping Rule, which was adopted in 1998, is designed to ensure that members with a large number of registered persons from firms that have been expelled from membership or have had their registration revoked ("Disciplined Firms") have proper supervisory procedures over telemarketing activities to prevent fraudulent and improper sales practices or other customer harm. Under the Rule, firms that hire a significant number of employees from Disciplined Firms must establish, maintain, and enforce special written procedures for supervising the telemarketing activities of all their registered persons. In addition, such firms are required to install taping systems to record all telephone conversations between all of their registered persons and both existing and potential customers, review the tape recordings, and file quarterly reports with NASD Regulation.

Based upon staff's experience with the Taping Rule and input from the National Adjudicatory Council and NASD Regulation Committees, the staff proposes several amendments to the Rule. Generally, the proposed amendments are intended to refine the

application of the Taping Rule and to provide additional flexibility to assist member firms in meeting their compliance obligations under the Rule. Firms that, as of the effective date of the proposed rule change, have a pending exemption request from the Taping Rule requirements (or related appeal before the National Adjudicatory Council ("NAC")), or for which the time period in which to seek an applicable exemption (or related appeal to the NAC) has not yet expired, may elect to comply with the Taping Rule as amended by the proposed rule change in lieu of complying with the current requirements under the Rule.

a. *Establishment of a 30-Day Staff Adjustment Period.* NASD Regulation is concerned that some firms may inadvertently or unintentionally become subject to the Taping Rule due, for example, to sudden turnover among registered persons or other events beyond the firm's control. As a means to address these types of occurrences, NASD Regulation is proposing to provide all firms that trigger application of the Taping Rule (for the first time) a one-time opportunity to obtain relief from the Taping Rule requirements by adjusting their staffing levels.

In particular, NASD Regulation proposes to permit firms, within 30 days after receiving the notice that they are subject to the Taping Rule or obtaining actual knowledge that they are subject to the Rule (and have promptly notified the Department of Member Regulation that they are subject to the Rule), to reduce their staffing levels to fall below the threshold levels contained in paragraph (b)(2)(viii) of the Taping Rule and thus avoid application of the Taping Rule. Under the proposed rule change, firms would not be permitted to hire additional registered representatives to fall below the stated thresholds but rather would be required to reduce their number of registered representatives from Disciplined Firms. Once a firm has made the reductions, the firm would not be permitted to rehire the terminated individuals for a period of at least 180 days. Under the proposed rule change, firms may elect, but are not required, to make reductions to their staffing levels. If a firm chooses not to make the adjustment, then it will be required to comply with the Taping Rule requirements.

A firm would be permitted to adjust its staffing levels only when it becomes subject to the Taping Rule for the first time. If the firm re-triggers the Taping Rule at any point in the future, then the firm automatically would become subject to its provisions. While a new entity resulting from a restructuring (by

a merger, acquisition, or otherwise) would be allowed to make a staff adjustment to avoid application of the Taping Rule even if one of the participating members in the restructuring had previously adjusted its staff level pursuant to the proposed rule change, this would not be the case for an entity that was restructured in an effort to avoid compliance with the Rule.

b. *Revision of the Criteria by Which Firms Become Subject to the Taping Rule.* NASD Regulation is proposing to revise the criteria for determining whether a firm is subject to the Taping Rule by excluding from the firm's calculations registered persons who were associated with a Disciplined Firm for only a short period of time. Specifically, in calculating whether firms exceed the Taping Rule thresholds set forth in the Rule, registered persons who were registered with one or more Disciplined Firms for 90 days or less within the last three years and who have no relevant disciplinary history, while still included in the total number of registered persons at a firm, may be excluded from the number of registered persons at the firm from Disciplined Firms.

NASD Regulation believes that the proposed rule change is consistent with the intent of the Taping Rule. The proposed rule change recognizes that persons registered with Disciplined Firms for a short period of time (*i.e.*, an aggregate total of 90 days or less) are far less likely to have acquired the "bad habits" from the Disciplined Firms that the Taping Rule seeks to redress. Moreover, it is anticipated that these individuals will receive proper training and supervision at their new firms. To provide greater assurance that these short-term employees have not acquired the "bad habits" of concern or do not otherwise raise the concerns that the Rule is designed to address, the proposed rule change also requires that such short-term employees have no disciplinary history by a finding of a violation of the provisions set forth in NASD IM-1011-1.

In addition, the proposed rule change would clarify that the calculation of registered representatives from Disciplined Firms includes independent contractors previously registered with a Disciplined Firm. NASD Regulation proposes to make a technical amendment to the current rule language by substituting "associated with one or more Disciplined Firms in a registered capacity" for "employed by one or more Disciplined Firms" in subparagraph (b)(2)(viii) of the Taping Rule.

c. *Expansion Of The Compliance Deadline From 30 To 60 Days.* Under the current Taping Rule, firms are obligated to implement the special supervisory procedures, including the installation of taping systems within 30 days of receiving notice from the NASD (or obtaining actual knowledge) that they are subject to the Taping Rule. Most of the firms that have become subject to the Taping Rule have requested extensions of time to complete the installation of a taping system. In light of these requests and the staff's understanding that firms typically require greater than 30 days to install an appropriate taping system, the proposed rule change would extend the time for firms to install the taping system from 30 days to 60 days. Based on the staff's experience, 60 days should provide adequate time for firms to install the taping systems and would alleviate the need for firms to request extensions of time.

d. *Clarification Of The Exemptive Relief Authority.* Currently, paragraph (b)(2)(xi) of the Taping Rule permits member firms that become subject to the Taping Rule to apply for exemptive relief under the Rule 9600 Series "upon satisfactory showing that the member's supervisory procedures ensure compliance with applicable securities laws and regulations and applicable rules of the Association." In reviewing exemptive requests, NASD Regulation generally has required a firm to establish that it has alternative procedures to assure supervision at a level functionally equivalent to a taping system. Notwithstanding this high standard, the staff has received a substantial number of applications for exemptive relief, all but one of which have been denied.

Based on its experience administering exemptive requests, the staff believes that the exemption provisions should be explicitly drafted to be available in "exceptional circumstances" only. The staff believes that clearly articulating a high standard for an exemption will save firms and the staff the time and expense involved in the vast majority of unmeritorious exemption applications the staff has reviewed to date. Further, the additional flexibility created by the proposed rule change, particularly the one-time ability to reduce staffing levels to avoid application of the Rule, should significantly reduce any need to seek an exemption.

e. *Increase Duration Of The Special Supervisory Requirements.* The proposed rule change would extend the time period for which firms must maintain taping systems from two years to three years. NASD Regulation

believes that this proposed change will reduce confusion concerning the application of the Taping Rule. Currently, the Taping Rule requires firms to install the taping systems for a period of two years; however, the Taping Rule also requires firms to look back three years for the employment history of their registered representatives to calculate the threshold levels under paragraph (b)(2)(viii) of the Taping Rule. Equalizing these two time periods to three years would eliminate the confusion and would alleviate any problems in the calculations for the Taping Rule thresholds.

In addition, the proposed rule change would clarify that the period for which firms are required to maintain the taping system begins from the date that the member establishes its special supervisory procedures and implements the taping system. The proposed rule change further would clarify in paragraph (b)(2)(ii) of the Taping Rule that a firm is required to both establish and implement the taping system within the time period set forth in such paragraph.

f. *Publication Of The Identity Of Firms Subject To The Taping Rule.* Since the inception of the Taping Rule, the staff has received requests from regulators, consumer groups, and investor representatives, to make the identity of firms subject to the Taping Rule publicly available. After careful consideration of the issue, NASD Regulation believes that public disclosure of the identity of firms subject to the Taping Rule in circumstances where information is being sought regarding a particular firm is appropriate and consistent with the objectives of the Taping Rule. As a result, the proposed rule change would enable investors and the general public to ascertain, upon request, whether an identified firm is subject to the Taping Rule.

## 2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,<sup>4</sup> which require, 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. NASD Regulation believes that the proposed rule change provides firms with more flexibility to comply with the Rule while still requiring firms that hire a

significant number of registered persons from Disciplined Firms to adopt enhanced supervisory procedures to protect investors and prevent fraudulent and manipulative sales practices.

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

NASD Regulation 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*

The proposed rule change was published for comment in NASD Notice to Members 01-38 (June 2001). Sixteen comments were received in response to the Notice.<sup>5</sup> Copies of the comment letters have been provided to the Commission. Of the 16 comment letters received, 12 were in favor of the proposed rule change and 4 were opposed.

*Establishment of a 30-day Staff Adjustment Period:* Generally, the commenters supported the proposal to allow member firms that become subject to the Taping Rule for the first time to make a downward adjustment of staff in order to fall below the triggering thresholds of the Rule. Nine of the commenters supported the proposal.<sup>6</sup> Three commenters opposed the proposal.<sup>7</sup> While supporting the proposal, Bartholomew believed that the staff adjustment mechanism should be based upon a facts and circumstances determination and should not be automatic. One commenter who did not support the proposal, Schonberg, noted that the representatives from Disciplined Firms, even employed for a short period of time, have the capability

to teach "bad habits" to the new firm's representatives.

*Short-term Employee Proposal:* With respect to the proposals to exclude short-term employees from a member firm's Taping Rule calculations and to define "short-term" as a period of not more than 90 days, a slight majority of the commenters supported the proposals. Nine commenters supported the proposal regarding a firm's calculations.<sup>8</sup> Seven commenters opposed this proposal.<sup>9</sup>

A smaller group of commenters responded to the proposed definition of short-term period. Seven commenters supported the proposed definition.<sup>10</sup> Six commenters opposed the proposed definition.<sup>11</sup> First Liberty and Banks believed the time period should be 30 days while Nova believed that the period should be no longer than 14 days. Joseph Stevens did not support the proposed definition due to the fact that firms may hire consultants for periods of longer than 90 days.

*Expansion of the Compliance Deadline:* In general, the commenters supported the proposals to extend the compliance deadline for firms that become subject to the Taping Rule requirements and to set the deadline for compliance at 60 days. Ten commenters supported extending the compliance deadline and, with the exception of Clark Dodge, J.P. Turner and Schwartz, the same commenters stated that the 60-day period was a sufficient period of time for compliance.<sup>12</sup> Five commenters did not support the extension of the current 30-day time period.<sup>13</sup> Clark Dodge, J.P. Turner, Schwartz, and Rushmore believed that the time period should be longer with Schwartz and Rushmore stating that a 90-day period would be more appropriate and Clark Dodge suggesting 75 days. Basmagy would maintain the current 30-day

<sup>5</sup> Comments letters were received from: Anonymous; Robert Banks ("Banks"); Patricia Bartholomew, Thinkequity Partners ("Bartholomew"); Clark Dodge & Company, Inc. ("Clark Dodge"); E.E. Powell & Company Inc. ("E.E. Powell"); First Liberty Investment Group ("First Liberty"); Jerard Basmagy, First Montauk Securities Corp. ("Basmagy"); Joseph Stevens & Co., Inc. ("Joseph Stevens"); J.P. Turner & Company, LLC ("J.P. Turner"); Alexander Nova ("Nova"); Personalized Investments, Inc. ("Personalized Investments"); Rushmore Securities Corp. ("Rushmore"); Matthew Schonberg, Aegis Capital Corp. ("Schonberg"); Seth Schwartz, Washington Square Securities, Inc. ("Schwartz"); Maryanne Sylenko ("Sylenko"); and James Welch, Morgan Stanley (Fort Worth, Texas) ("Welch").

<sup>6</sup> See, e.g., Comment letters from First Liberty, Joseph Stevens, Basmagy, Personalized Investments, Bartholomew, E.E. Powell, Schwartz, Sylenko, and Clark Dodge.

<sup>7</sup> See, e.g., Comment letters from Schonberg, Welch, and Anonymous.

<sup>8</sup> See, e.g., Comment letters from Banks, J.P. Turner, Joseph Stevens, Basmagy, Personalized Investments, E.E. Powell, Sylenko, Clark Dodge, and Rushmore. (Although Banks responded negatively to Question 2, he did express a willingness to support the proposal if the 90-day short-term period was done in the aggregate. The proposal would calculate the 90-day period in the aggregate.)

<sup>9</sup> See, e.g., Comment letters from First Liberty, Schonberg, Nova, Bartholomew, Schwartz, Welch, and Anonymous.

<sup>10</sup> See, e.g., Comment letters from Personalized Investments, Basmagy, E.E. Powell, Welch, Anonymous, Clark Dodge, and Rushmore.

<sup>11</sup> See, e.g., Comment letters from First Liberty, Schonberg, Banks, Nova, Joseph Stevens, and Schwartz.

<sup>12</sup> See, e.g., Comment letters from First Liberty, J.P. Turner, Joseph Stevens, Personalized Investments, E.E. Powell, Schwartz, Welch, Anonymous, Clark Dodge, and Rushmore.

<sup>13</sup> See, e.g., Comment letters from Schonberg, Banks, Nova, Basmagy, and Bartholomew.

<sup>4</sup> 15 U.S.C. 78-3(b)(6).

period; however, he would permit firms to petition the Association for extensions of time.

*Narrowing of the Exemptive Relief Authority:* No comments were received on the proposal expressly to limit the exemptive provisions of the Taping Rule to "exceptional circumstances."

*Increase Duration of the Special Supervisory Requirements:* No comments were received on the proposal to extend the taping requirements and special supervisory procedures from two years to three years to correspond to the look-back provisions of the Rule.

*Publication of the Identity of Firms Subject to the Taping Rule:* The Notice to Members sets forth two proposals for publication of the identity of firms subject to the Taping Rule. One proposal would allow an individual to receive the information that a firm is subject to the Taping Rule in response to a request for information of the firm through the CRD Public Disclosure Program ("PDP"). The other proposal would publish a list of firms subject to the Taping Rule on the NASD Regulation web site similar to the list of Disciplined Firms that is currently on the Web site. The majority of commenters supported both proposals.

Thirteen commenters supported the disclosure of the information through the PDP<sup>14</sup> and of these commenters only Clark Dodge did not support posting the information on the Web site. Banks and Basmagy supported the proposals since they would permit an investor to make an informed decision prior to establishing a relationship with a member firm. J.P. Turner and Rushmore did not support either proposal noting that publication of the information would be unfair to the firms. Nova supported both proposals, however he recommended that the information be put in one location in the PDP so that the public could more easily obtain the information.

NASD Regulation believes that the list of taping firms should not be made publicly available on the NASD Regulation Web site because the requirement to tape is not a disciplinary sanction, but rather a heightened supervisory requirement not typically disclosed to the public. However, because knowing whether a firm is subject to the Taping Rule may help investors make a more informed decision about doing business with a firm, NASD Regulation would make the

information available to investors who inquire about a specific firm. In addition, NASD Regulation would highlight to investors (e.g., on the NASD Regulation Web site) the ability to inquire through the PDP's toll-free telephone listing whether a particular firm is subject to the Taping Rule.

### 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, including whether the proposal 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 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-2002-04 and should be submitted by July 9, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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**BILLING CODE 8010-01-P**

<sup>15</sup> 17 CFR 200.30-3(a)(12)

## TENNESSEE VALLEY AUTHORITY

### Operating License Renewal of the Browns Ferry Nuclear Plant in Athens, AL

**AGENCY:** Tennessee Valley Authority (TVA).

**ACTION:** Issuance of Record of Decision.

**SUMMARY:** This notice is provided in accordance with the Council on Environmental Quality's regulations (40 CFR parts 1500 to 1508) and TVA's procedures implementing the National Environmental Policy Act. On May 16, 2002, the TVA Board of Directors decided to adopt the preferred alternative (Refurbishment and Restart of Unit 1 With Extended Operation Of All Units) identified in TVA's Final Supplemental Environmental Impact Statement (FSEIS), Operating License Renewal Of The Browns Ferry Nuclear Plant In Athens, Alabama.

The FSEIS was made available to agencies and the public for additional comment in April 2002. A Notice of Availability of the FSEIS was published in the **Federal Register** on April 5, 2002. Under the selected alternative, in response to increasing demand for bulk power, TVA seeks to maximize the use of existing facilities to the greatest extent possible. This approach has the three-fold benefits of assuring future power supplies, avoiding the even larger capital outlays associated with new construction, and avoiding the environmental impacts resulting from siting and construction of new power generating facilities. Consistent with this approach, TVA has decided to seek to extend operation of Units 1, 2 and 3 of its Browns Ferry Nuclear Plant (BFN) located in Limestone County, Alabama. This will require obtaining a renewal of operating licenses for the units from the Nuclear Regulatory Commission (NRC). Renewal of the operating licenses would permit operation for an additional twenty years past the current (original) 40-year operating license terms which expire in 2013, 2014, and 2016 for Units 1, 2, and 3, respectively.

License Renewal by itself involves existing BFN facilities and does not require any new construction or modifications beyond normal maintenance and minor refurbishment. However, there are other proposed projects not directly related to license renewal that are connected to, or could affect, license renewal. One of these projects is the recovery of Unit 1, which has been in a non-operational state for 17 years. Other projects include the addition of new administration and modifications fabrication buildings and

<sup>14</sup> See, e.g., Comment letters from First Liberty, Schonberg, Banks, Nova, Personalized Investments, Basmagy, Bartholomew, E.E. Powell, Schwartz, Welch, Anonymous, Slenko, and Clark Dodge.