

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51786; File No. SR-NASD-2005-064)

June 6, 2005

**Self-Regulatory Organizations; National Association of Securities Dealers, Inc.
Notice of Filing of Proposed Rule Change Relating to the Publication of any
Decision Issued by the National Adjudicatory Council Pursuant to Rule 1015**

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 May 12, 2005, the National Association of Securities Dealers, Inc. ("NASD") 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. 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

NASD is proposing to amend NASD Interpretative Material 8310-2 ("IM-8310-2") to give NASD authority to release to the public, in unredacted form, information with respect to any decision issued by the National Adjudicatory Council ("NAC") pursuant to NASD Rule 1015. The text of the proposed rule change is available on NASD's Web site (<http://www.nasd.com>), at NASD's Office of the Secretary, and at the Commission's Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 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 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 proposed rule change will amend IM-8310-2 to give NASD authority to release to the public, in unredacted form, information with respect to any decision issued by the NAC pursuant to Rule 1015. Rule 1015 is part of the Rule 1010 Series governing membership proceedings. These proceedings involve both new member applications and applications for approval of a change in ownership, control, or business operations.

Background

The NAC reviews two types of membership decisions that are adverse to the applicants. Under Rule 1014, NASD's Department of Member Regulation ("Department") determines whether an applicant meets all of the requisite standards for admission to NASD and serves the applicant with a written decision. Department decisions under Rule 1014 explain the reason for any restriction or, in some cases, denial. Under Rule 1017, the Department considers applications for approval of change in ownership, control, or business operations and renders a decision. Department decisions under Rule 1017 explain the basis for denying a requested application in whole or in part.

Under Rule 1015, an aggrieved applicant may file a written request for NAC review of the Department's decision issued under Rules 1014 or 1017. Unlike disciplinary appeals conducted pursuant to the Rule 9300 Series, membership appeal hearings before the NAC are trial-level proceedings that usually involve the submission of new exhibits and testimony and are not limited to 30-minute appellate argument. The NAC may affirm, modify, or reverse the Department's decision or remand the membership proceeding with instructions. The NAC's decision will include a description of the Department's decision, including its rationale; a description of the principal issues raised; a summary of the evidence; a statement as to whether the Department's decision is affirmed, modified, or reversed; and a rationale for the decision that references the applicable standards. The NAC's decisions under Rule 1015 are subject to discretionary review by the NASD Board, which may affirm, modify, reverse, or remand the NAC's proposed decision. IM-8310-2 does not currently provide for the release of NAC membership application decisions.³

³ NASD currently makes the following decisions issued by the NAC available to the public under IM-8310-2 and publishes them on NASD's Web site:

- in unredacted form, any disciplinary decision imposing a suspension, cancellation or expulsion of a member; or suspension or revocation of the registration of an associated person; or suspension or barring of a member or person associated with a member; or imposition of monetary sanctions of \$10,000 or more on a member or associated person;
- in redacted form, any disciplinary decision that does not meet the above requirements;
- in redacted form, decisions issued in eligibility proceedings governing the association of a statutorily disqualified person with a member.

Proposed Rule Change

The proposed rule change would amend IM-8310-2 to give NASD authority to release to the public, information with respect to any decision issued by the NAC pursuant to Rule 1015, including decisions pertaining to new membership applications (Rule 1014) or continuing membership applications (Rule 1017). NASD proposes to release these decisions in unredacted form, except that the decisions would not routinely identify those persons who are not themselves under consideration or review as part of the membership application process. For example, the decisions would not routinely name shareholders of a closely held broker-dealer that is being sold when the decision evaluates the qualifications of the proposed buyers. NASD notes that, if a member appeals the NAC's adverse decision to the SEC, the SEC will make its decision in the matter available to the public, including on the SEC's Web site.

NASD believes that making these decisions available to the public would benefit both potential new members and members that are considering a change in ownership, control, or business operations. Access to these decisions would assist applicants in understanding the standards that must be met under Rule 1014 or 1017, as appropriate, and the manner in which such standards are applied, especially with respect to applicants that are denied membership. Applicants also would be better informed about the membership process and standards and may be deterred from pursuing meritless appeals. NASD believes that public investors and persons who are potentially seeking NASD membership should have the opportunity to review the rationale behind the NAC's decisionmaking, including where the NAC denies membership to an applicant. In addition, publishing the NAC's decisions would benefit the NAC members who serve on

the subcommittees that conduct the hearing in connection with applications for membership and change in ownership, control, or business operations because their decisions could cite to and build upon earlier NAC precedents.

NASD also believes that public investors will benefit from the availability of information about any limitations placed on members, where such limitations result from proceedings before the NAC. NASD believes that public investors also will benefit from the availability of NAC decisions that describe the factors that have been instrumental in the granting of membership or the expansion of business activities available to the public.

NASD will announce the effective date of the proposed rule change in a Notice to Members to be published no later than 60 days following Commission approval. The effective date will be 30 days following publication of the Notice to Members announcing Commission approval. NASD will publish only those NAC decisions issued pursuant to Rule 1015 in which the appeal has been filed on or after the effective date of this proposed rule change.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of with Section 15A(b)(6) of the Act,⁴ which requires, among other things, that NASD 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 believes that amending IM-8310-2 to release to the public information with respect to any decision issued by the NAC under Rule 1015, in unredacted form, is in the interest of both member firms and the general public to be able to read these

⁴ 15 U.S.C. 78o-3(b)(6).

decisions to become better informed about NASD's membership process and standards and the manner in which such standards are applied.

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

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.

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 NASD 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 proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASD-2005-064 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-0609.

All submissions should refer to File Number SR-NASD-2005-064. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 also will be available for inspection and copying at the principal office of NASD.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to the

File Number SR-NASD-2005-064 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland
Deputy Secretary

⁵ 17 CFR 200.30-3(a)(12).