

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51658; File No. SR-NASD-2005-033)

May 5, 2005

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval of Proposed Rule Change Relating to Taping Rule “Opt Out” and Exemption Provisions

On March 22, 2005, 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”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend paragraph (L) of NASD Rule 3010(b)(2) (“Taping Rule”). The proposed rule change would (1) require member firms that are seeking an exemption from the Taping Rule to submit their exemption requests to NASD within 30 days of receiving notice from NASD or obtaining actual knowledge that they are subject to the provisions of the Taping Rule and (2) clarify that firms that trigger application of the Taping Rule for the first time can elect to either avail themselves of the one-time “opt out provision” or seek an exemption from the Taping Rule, but they may not seek both options.³ The proposal also replaced, as a technical change, several references to “Association” and “NASD Regulation” in NASD Rule 3010(b)(2) with “NASD.”

The proposed rule change was published for comment in the Federal Register on

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ According to the NASD, it will announce the effective date of the proposed rule change in a Notice to Members (“NtM”) to be published no later than 60 days following Commission approval. The effective date would be 30 days following publication of the NtM announcing Commission approval.

April 4, 2005.⁴ The Commission received no comments on the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association,⁵ and, in particular, the requirements of Section 15A of the Act⁶ and the rules and regulations thereunder. The Commission specifically finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act⁷ in that it is 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. The Commission believes that the proposed rule change should ensure that members use the opt out and exemption provisions of the Taping Rule consistent with the investor protection concerns that the Taping Rule is intended to address.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,⁸ that the proposed rule change (File No. SR-NASD-2005-033) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland
Deputy Secretary

⁴ See Securities Exchange Act Release No. 51434 (March 24, 2005), 70 FR 17134.

⁵ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78o-3.

⁷ 15 U.S.C. 78o-3(b)(6).

⁸ 15 U.S.C. 78s(b)(2).

⁹ 17 CFR 200.30-3(a)(12).