

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-51605; File No. SR-NASD-2005-004)

April 25, 2005

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Annual Compliance Meetings

On January 13, 2005, the National Association of Securities Dealers (“NASD”) filed with the Securities and Exchange Commission (“Commission” or “SEC”) a proposed rule change, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² to clarify that the system that each member is required to establish and maintain to supervise the activities of registered representatives and associated persons also applies to registered principals. On March 1, 2005, NASD filed Amendment No. 1 to the proposed rule change.³ On March 9, 2005, NASD filed Amendment No. 2 to the proposed rule change.⁴ The proposed rule change, as amended, was published for comment in the Federal Register on March 21, 2005.⁵ The Commission received two comment letters on the proposal, as amended.⁶ On

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the NASD further clarified that the scope of NASD Rules 3010(a), 3010(a)(3), and 3010(b)(1), specifically extends to registered representatives and registered principals, as well as other associated persons.

⁴ In Amendment No. 2, the NASD filed a partial amendment to the proposed rule change to remove the underlining from the term “applicable NASD Rules” in NASD Rule 3010(a), as it is part of the existing rule text.

⁵ See Securities Exchange Act Release No. 51368 (March 14, 2005), 70 FR 13560 (March 21, 2005).

⁶ See letters from Jed Bandes, dated April 7, 2005 (“Bandes Letter”) and William F. Marshall, President, First Winston Securities, Inc., dated April 11, 2005 (“First Winston Letter”).

April 22, 2005, the NASD filed a response to the comment letters.⁷ This order approves the proposed rule change, as amended.

I. Description of Proposed Rule Change

NASD proposes to amend NASD Rule 3010(a)(7) to require that registered principals, in addition to registered representatives, attend an annual compliance meeting. NASD Rule 3010(a)(7) currently requires the attendance of registered representatives at annual compliance meetings, but it does not require the attendance of registered principals. NASD believes that registered principals also should be required to attend such meetings given the supervisory and compliance-related functions that principals perform and that the primary purpose of these meetings is to discuss compliance issues and keep registered persons current on changing compliance requirements or changes in the firm. Accordingly, NASD proposes to amend NASD Rule 3010(a)(7) to require that all registered principals, in addition to registered representatives, attend an annual compliance meeting in accordance with the Rule.

Further, although registered principals are included in the definition of associated person⁸ and thus are included in the scope of NASD Rule 3010(a), registered principals are not specifically listed in NASD Rule 3010(a). Therefore, NASD proposes a technical amendment to NASD Rule 3010(a) to clarify that each member is required to establish and maintain a system to supervise the activities of each registered representative, registered principal, and associated person.

NASD represents that the proposal clarifies that this provision applies to registered representatives and registered principals, as well as all other associated persons. To be consistent

⁷ See letter to Katherine A. England, Assistant Director, Division of Market Regulation from Afshin Atabaki, Counsel, NASD, dated April 22, 2005 (“NASD Response Letter”).

⁸ See NASD Rule 1011(b).

with this proposed amendment to NASD Rule 3010(a), NASD is proposing similar changes to NASD Rules 3010(a)(3) and 3010(b)(1) to clarify that the scope of these rules extends to registered representatives and registered principals, as well as other associated persons.⁹ NASD is also proposing to replace a reference to “Association” with “NASD” in the text of NASD Rule 3010(b)(1) to reflect the fact that NASD no longer refers to itself using its full corporate name, “Association,” or “the NASD.”

II. Summary of Comment and NASD’s Response

The Commission received two comment letters on the proposed rule change that opposed the adoption of the proposal in its current form.¹⁰

Specifically, one commenter stated that the proposed rule change requiring principals to attend compliance meetings at the NASD was “bureaucratic excess and self indulgence” as well as difficult to comply with for handicapped individuals.¹¹ A second commenter stated that the NASD’s proposal would “impose an undue hardship both in time and monetarily” for small firms.¹²

NASD responded by stating that the commenters mischaracterized the proposal. NASD explained that the proposal requires the attendance of registered principals (in addition to registered representatives) at annual compliance meetings that are conducted by their respective member firms, not the NASD. Furthermore, NASD responded to the commenters’ concerns by noting that the rule itself states that members are provided with substantial flexibility in implementing the compliance meeting requirement. NASD further stated that the proposal

⁹ See Amendment No. 1, supra note 3.

¹⁰ See First Winston Letter and Bandes Letter.

¹¹ See Bandes Letter.

¹² See First Winston Letter.

expressly allows the compliance meeting to be conducted at a principal's place of business and outside of regular business hours. Additionally the meeting may be conducted by video conference, interactive classroom setting, telephone or other interactive means provided appropriate safeguards are in place.¹³

III. Discussion

The Commission has carefully reviewed the proposed rule change, the comment letters, and NASD's response and finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.¹⁴ In particular, the Commission finds that the proposed rule change, as amended, is consistent with Section 15A.¹⁵ Specifically, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act because it is designed to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.¹⁶

The NASD's response to the comments adequately addresses the concerns raised. Moreover, the Commission believes that requiring registered principals to attend an interview or meeting at least annually at which relevant compliance matters are discussed will help to ensure that registered principals are current on new compliance requirements and changes at their firms.

¹³ See NASD Response Letter.

¹⁴ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁵ 15 U.S.C. 78o-3.

¹⁶ 15 U.S.C. 78o-3(b)(6).

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁷ that the proposed rule change (SR-NASD-2005-004), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁸

Margaret H. McFarland
Deputy Secretary

¹⁷ 15 U.S.C. 78s(b)(2).

¹⁸ 17 CFR 200.30-3(a)(12).