

Commissioner Hunt, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The closed meeting scheduled for Wednesday, July 1, 1998, at 2:30 p.m., will be:

Institution of injunctive actions.

Institution of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942-7070.

Dated: June 23, 1998.

Jonathan G. Katz,
Secretary.

[FR Doc. 98-17149 Filed 6-23-98; 4:11 pm]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40105; File No. SR-NASD-98-28]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Approval of Research Reports

June 22, 1998.

I. Introduction

On April 27, 1998, NASD Regulation, Inc. ("NASD Regulation") 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 Rule 2210, "Communications with the Public," of the Conduct Rules of the National Association of Securities Dealers, Inc. ("NASD" or "Association"). The proposed rule change will permit the approval of research reports by a supervisory analyst acceptable to the New York Stock Exchange ("NYSE") under NYSE Rule 344, "Supervisory Analysts,"³ to satisfy the requirement under NASD Rule 2210 that research reports be approved by a registered principal.

The proposed rule change was published for comment in the **Federal**

Register on May 19, 1998.⁴ No comments were received on the proposal. This order approves the proposal.

II. Description of the Proposal

Currently, NASD Rule 2210(b)(1) requires each item of advertising and sales literature to be approved by signature or initial of a registered principal of an NASD member prior to use or filing with NASD Regulation. Under NASD Rule 2210(a)(2), "sales literature" includes research reports. A joint NASD/NYSE member asked the NASD whether the approval of research reports by a supervisory analyst approved by the NYSE under NYSE Rule 344 could satisfy the requirement under NASD Rule 2210 that a registered principal approve research reports prior to use or filing with NASD Regulation.

In order to become a supervisory analyst under NYSE Rule 344, an applicant may present evidence of appropriate experience and either (i) pass an NYSE Supervisory Analyst Examination, or (ii) successfully complete a specified level of the Chartered Financial Analysts Examination prescribed by the NYSE and pass only that portion of the NYSE Supervisory Analysts Examination dealing with NYSE rules on research standards and related matters.⁵ The NASD Regulation staff reviewed the NYSE content outline for the NYSE's Supervisory Analysts Examination and found that the particular categories of securities addressed in the "securities analysis" section of the content outline are fixed income securities and equity securities. The NASD Regulation staff concluded that the coverage of the NYSE communication rules in NYSE's Supervisory Analysts Examination is comparable to the communication materials covered in the NASD principal examination.⁶ Accordingly, NASD Regulation believes that, with respect to the level of training and experience necessary for review of research reports on debt and equity securities, the level of supervisory analyst registration is comparable to the level of NASD principal registration. Given that the scope of approval authority is limited to research reports on debt and equity securities and that the material in the NYSE's Supervisory Analysts Examination and the NASD's principal examination is comparable,

the NASD Regulation staff concluded that the investor protection goals that the NASD's principal review requirement are designed to serve could be satisfied by the NYSE's requirements in this area.

Accordingly, the proposed rule change amends NASD Rule 2210(b)(1) to state that the requirement that advertising and sales literature be approved by a registered principal of an NASD member firm may be met, with respect to corporate debt and equity securities that are the subject of research reports as that term is defined in NYSE Rule 472, "Communications with the Public,"⁷ by the signature or initial of a supervisory analyst approved pursuant to NYSE Rule 344. Any other material requiring supervisory approval would continue to require approval by an NASD registered principal.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6)⁸ of the Act, which require that the rules of the Association be designed to promote just and equitable principles of trade and to protect investors and the public interest. The proposal amends NASD Rule 2210(b)(1) to state that the requirement that advertising and sales literature be approved by a registered principal of an NASD member firm may be met, with respect to corporate debt and equity securities that are the subject of research reports, as defined in NYSE Rule 472, by the signature or initial of a supervisory analyst approved pursuant to NYSE Rule 344. NASD Regulation staff states that it has reviewed the content outline for the NYSE Supervisory Analysts Examination and concluded that the coverage of the NYSE communication rules in the Supervisory Analysts Examination is comparable to the communication materials covered in the NASD principal examination. Additionally, the NASD Regulation staff has represented that any change to NYSE Rule 344 or the NYSE Supervisory Analysts Examination would be cause for the NASD to review NASD Rule 2210 to ensure that NASD and NYSE requirements for approval of research reports remain comparable.⁹ Given that

⁷ NYSE Rule 472, Supplementary Material .10 defines "research reports" as " * * * an analysis of individual companies, industries, market conditions, securities or other investment vehicles which provide information reasonably sufficient upon which to base an investment decision."

⁸ 15 U.S.C. 78o-e.

⁹ This representation was made by Robert J. Smith of the Office of General Counsel, NASD Regulation,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ NYSE Rule 344 states that supervisory analysts must be acceptable to, and approved by, the NYSE. NYSE Rule 344, Supplementary Material .10 sets forth examination and other requirements for supervisory analysts.

⁴ See Securities Exchange Act Release No. 39985 (May 12, 1998), 63 FR 27608.

⁵ See NYSE Rule 344, Supplementary Material .10.

⁶ The NASD principal examination referred to here is the Series 24 Qualification Examination for Principals.

the proposed rule change permits the approval of research reports by a supervisory analyst approved pursuant to NYSE Rule 344 in limited circumstances and according to standards comparable to current NASD requirements, the Commission believes that the proposed rule change preserves the investor protection goals of the NASD principal review requirement rules and eliminates duplicative regulatory requirements.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act¹⁰ that the proposed rule change (SR-NASD-98-28) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98-17080 Filed 6-25-98; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40103; File No. SR-NASD-98-04]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to Proposed Rule Change Relating to Mandatory Arbitration of Claims Involving Exempted Securities.

June 19, 1998.

I. Introduction

On January 27, 1998, the National Association of Securities Dealers, Inc. ("NASD" or "Association") submitted to 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 the interpretation of the NASD's Code of Arbitration Procedure ("Code") such that all claims relating to transactions in exempted securities, including government and municipal securities, may be submitted to the Office of Dispute Resolution ("Office") for arbitration under the Code without limitation. Accordingly, when such claims arise involving public customers, Rule 10301 of the code will require member firms and associated

persons to arbitrate them at the request of the customer. In addition, when such claims arise between members and other members or associated persons, Rule 10201 (which governs intra-industry disputes) will require them to be arbitrated at the request of one of the parties. Finally, when such claims arise between a member firm and a customer, customers can be required under the terms of a predispute arbitration agreement to arbitrate the claims.

Notice of the proposed rule change, together with the substance of the proposal, was published for comment in Securities Exchange Act Release No. 39880 (April 16, 1998), 63 FR 20230 (April 23, 1998). No comments were received on the proposal.

II. Description

Since at least 1989, the Office had declined to accept claims for mandatory arbitration involving transactions in government securities naming member firms that were registered solely under Section 15C of the Act as government securities broker/dealers.³ By contrast, if a claim involves a government securities transaction by a general securities broker/dealer member firm, the Office will accept the claim for mandatory arbitration. If the claim involves a municipal securities transaction by a member firm,⁴ the Office will accept the claim for arbitration.⁵ In addition, the

³ Section 15C of the Act, 15 U.S.C. 78o-5, governs the registration of government securities broker/dealers. Since 1986, when Section 15C was adopted as part of the Government Securities Act, government securities broker/dealers have been required to become members of an exchange or the NASD.

⁴ Section 15B of the Act, 15 U.S.C. 78o-4, governs the registration of municipal securities dealers. Municipal securities dealers are not required to become members of an exchange or the NASD. Nevertheless, some NASD members which are engaged in a general securities business are registered as municipal securities dealers, and some firms which are exclusively municipal securities dealers have become members of the NASD.

⁵ The NASD previously asked claimants in these cases if they wanted the claim referred to the Municipal Securities Rulemaking Board ("MSRB") for arbitration. However, the Commission recently approved an MSRB proposed rule change terminating the MSRB's arbitration program and requiring the financial institutions that are subject to its rules to submit to arbitration in the NASD's forum as if they were NASD members. See Securities Exchange Act Release No. 39378 (December 1, 1997), 62 FR 64417 (December 5, 1997). The Commission believes that compelling NASD members to arbitrate municipal securities claims would be consistent with the intent of the MSRB's rule filing eliminating its arbitration program and sending its arbitration cases to the NASD. The Commission notes that NASD members engaged in municipal securities transactions already are required to arbitrate their claims because they are either general securities broker/dealers that are otherwise required to arbitrate all of their other claims, or because they voluntarily became NASD members. The Commission notes

Office will accept claims where both parties agree to submit the claim to arbitration.

Rule 10101 of the Code provides that disputes "arising out of or in connection with the business of any member" are eligible for submission to arbitration under the Code. The definition of "investment banking or securities business" in Article I, paragraph (l) of the By-Laws means "the business carried on by a broker, dealer, or municipal securities dealer * * *." Rule 10301(a) provides that eligible disputes "arising in connection with the business of [a] member or in connection with the activities of [an] associated person" must be arbitrated pursuant to any enforceable arbitration agreement or upon the demand of a customer. While these rules (and the definition) sweep in a very broad range of disputes, Rule 10301(b) permits the Office to decline to arbitrate certain matters.

In reliance on Rule 10301(b), and the NASD's limited regulatory jurisdiction over government securities-only member firms the Office has for many years declined to accept for arbitration claims that involved transactions in government securities by member firms engaged only in activities involving government securities unless both parties voluntarily agreed to submit the claim. The Office's position means that these claims cannot be compelled into arbitration under either a demand for arbitration or a predispute arbitration agreement. The Office's decision to decline to mandate arbitration of government securities claims was based on the following rationale: (1) the NASD only regulated the exempted securities activities of member firms to the limited extent permitted in Section 15A(f)(2) of the Act; and, (2) the subject matter jurisdiction of the arbitration forum should not be significantly different from the NASD's regulatory jurisdiction over its members and associated persons.

In response to the passage of the Government Securities Act Amendments of 1993, which amended Section 15A(f)(2) of the Act and granted the NASD the authority to regulate broadly the business practices of members with respect to government securities,⁶ NASD Regulation amended its rules to consolidate the Government Securities Rules it had adopted pursuant to Section 15A(f)(2) of the Act with its more generally applicable

that this filing does not affect the arbitration of municipal securities.

⁶ The NASD is still barred from establishing regulations covering the municipal securities activities of broker/dealers; that authority is reserved to the MSRB.

to Heidi Pilpel, Special Counsel, Division of Market Regulation, on May 12, 1998.

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.