

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

In September 1996, the Board published a notice expressing its concern over the costs of operating the arbitration program in light of the decreasing number of cases filed with the Board.⁴ The Board stated that the decline in its caseload makes it difficult to justify the cost of continuing to operate the arbitration program, and that it was considering discontinuing its arbitration program. The Board requested comment on the impact that such action would have on the public and the industry, and specifically requested comment on what effect, if any, the elimination of its arbitration program would have on bank dealers who are not NASD members.

In response to its request, the Board received comment letters from a dealer and from an individual who serves as an arbitrator for the Board. The dealer expressed its concern that arbitrators serving in other SRO arbitration programs do not have sufficient knowledge of the municipal securities industry. In an attempt to address this concern, the Board, in the next few months, plans to forward its list of arbitrators to the NASD.

With regard to bank dealers, the dealer stated that the Board's program should not be eliminated until an arbitration forum is established for these dealers, and suggested that the Board require bank dealers to use the NASD's arbitration program for resolving disputes involving municipal securities. The proposed rule change accomplishes this.

The other commentator expressed his belief that elimination of the Board's program will not impair the industry's arbitration process.

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

Within 35 days of the 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 the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

⁴ *MSRB Reports*, Vol. 16, No. 3 (Sept. 1996) at 25.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Board. All submissions should refer to File No. SR-MSRB-97-04 and should be submitted by September 11, 1997.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38936; File No. SR-NASD-97-42]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Amend NASD Rule 2320(g) To Provide Authority to the Staff of NASD Regulation To Grant Exemptions From Such Provision

August 14, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 17, 1997, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 Regulation is proposing to amend NASD Rule 2320(g) to provide authority to the staff of NASD Regulation to grant exemptions from such provision. Below is the text of the proposed rule change. Proposed new language is in italics.

Rule 2320. Best Execution and Interpositioning

(g) (1) In any transaction for or with a customer pertaining to the execution of an order in a non-Nasdaq security (as defined in the Rule 6700 Series), a member or person associated with a member, shall contact and obtain quotations from three dealers (or all dealers if three or less) to determine the best inter-dealer market for the subject security.

(g)(2) *The staff, upon written request, after taking into consideration all relevant factors, may exempt any transaction or classes of transactions, either unconditionally or on specified terms from any or all of the provisions of this paragraph if it determines that such exemption is consistent with the purpose of this rule, the protection of investors, and the public interest. Any decision whether to grant such an exemption may be appealed to the National Business Conduct Committee.*

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

In its filing with the Commission, the self-regulatory organization 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. The self-regulatory organization 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

NASD Rule 2320(g) ("The Three Quote Rule" or "Rule") originally was adopted on May 2, 1988¹ as an amendment to the NASD's best execution interpretation ("Interpretation of the Board of Governors—Execution of

¹ See Securities Exchange Act Release No. 25637 (May 2, 1988), 53 FR 16488 (May 9, 1988).

Retail Transactions in the Over-the-Counter Market") under Article III, Section 1 of the NASD's Rules of Fair Practice (currently NASD Rules).² The amendment expanded a member's best execution obligation to customers by setting forth additional requirements for customer transactions in non-Nasdaq securities. In particular, the amendment requires members that execute transactions in non-Nasdaq securities on behalf of customers to contact a minimum of three dealers (or all dealers if three or less) and obtain quotations in determining the best inter-dealer market. Under the best execution interpretation, each member is generally required to use reasonable diligence to ascertain the best inter-dealer market for a security, and to buy or sell in that market so that the resultant price to the customer is as favorable as possible under prevailing market conditions.³

The Three Quote Rule was adopted in connection with the NASD's efforts to develop a nationwide automated market surveillance program for non-Nasdaq, over-the-counter ("OTC") securities (commonly referred to as "pink sheet" stocks). Concurrent with these activities, the NASD proposed and the Commission approved new Schedule H to the NASD's By-Laws, which established an electronic system of mandatory price and volume reporting for the over-the-counter non-Nasdaq securities.⁴ The Three Quote Rule was designed to create a standard to help assure that members would fulfill their best execution responsibilities to customers in non-Nasdaq securities, especially transactions involving relatively illiquid securities with non-transparent prices.

OTC Bulletin Board Developments: On May 1, 1990, the Commission issued an order approving the operation of the NASD's OTC Bulletin Board Display Service ("OTC Bulletin Board") for a pilot term of one year.⁵ The NASD

introduced the OTC Bulletin Board to allow NASD eligible members to enter, update and retrieve quotation information on a real-time basis in non-Nasdaq securities.⁶

Since the establishment of the OTC Bulletin Board, significant market, regulatory and technology related improvements have occurred in the non-Nasdaq marketplace. In particular, the NASD has implemented enhancements to the OTC Bulletin Board to increase the reliability of information contained therein. These changes include: requiring that all priced quotations entered by market makers in domestic securities be firm for at least one trading unit;⁷ calculating inside quotes for individual securities and disseminating this information through vendors; and establishing larger minimum-size requirements for market makers' quotes in domestic securities. Most recently, in July, 1993, the Commission approved a NASD rule change to implement real-time trade reporting for members' over-the-counter transactions in certain non-Nasdaq equity securities,⁸ and in April, 1994, the NASD commenced real-time dissemination of transaction reports via the Nasdaq network and the networks of commercial vendors, providing member firms and their customers access to last-sale price and volume information for these securities throughout the business day.

The OTC Bulletin Board meets the requirements of an "automated quotation system" as the characteristics of such system are described in Section 17B of the Act.⁹ As such, the OTC Bulletin Board has assisted member broker-dealer in complying with certain disclosure regulations under Section 15(g) of the Act (Penny Stock Rules),¹⁰ and has deterred fraudulent and manipulative trading practices in Penny Stocks¹¹ due to, among other things, real-time transaction reporting. Due to the technological improvements to the OTC Bulletin Board, the NASD's

surveillance capabilities have been enhanced, among other things, to permit computerized analyses of market makers' quotation entries and reported transactions.

Application of the Three Quote Rule

Some members who are active dealers in the non-Nasdaq market have questioned the value of the Three Quote Rule in various situations in which it is claimed that adherence to the requirement may not assure the satisfaction of the best execution obligation and, in fact, may hinder satisfaction of the obligation because of the time delays involved in contacting and collecting quotations from three separate dealers. Some member broker-dealers have questioned whether the Three Quote Rule should continue to apply to all customer transactions in non-Nasdaq securities due to the technological and regulatory improvements to the non-Nasdaq marketplace, and, in particular, to the OTC Bulletin Board, over the past seven years.

Certain Non-Nasdaq Securities Quoted on the OTC Bulletin Board

NASD Regulation believes that general exemptive authority under the Rule may be appropriate to provide some flexibility to respond to changing market conditions and respond to particular fact situations. NASD Regulation has not yet determined, however, whether any particular class of transactions should be exempted. Based on the technological and regulatory improvements made to the OTC Bulletin Board market, arguably certain classes of transactions on the OTC Bulletin Board may warrant an exemption from the requirements of the Three Quote Rule if it can be demonstrated that the Rule could serve as an impediment to satisfying the best execution obligation. For example, certain customer agency orders in domestic equity securities may pose different issues and concerns than trades in the same securities in which the member firm acts as principal in effecting a transaction with its customer. Facts to be considered in determining whether to grant an exemptive request could include: (1) The number of firms publishing firm quotations and the period of time during which such quotations were published; (2) the size of the customer order in relation to the minimum size of the market makers' quotations; (3) the transaction volume of the security in question; and (4) the number of dealers publishing quotations through an electronic quotation medium in comparison to dealers in the security that do not publish such quotes.

²The Best Execution Interpretation in Article III, Section 1 of the NASD's Rules of Fair Practice was converted into new NASD Rule 2320 in connection with the NASD's Manual revision project. See Securities Exchange Act Release No. 36698 (January 11, 1996), 61 FR 1419 (January 19, 1996).

³See NASD Rule 2320(a).

⁴New Schedule H of the By-laws required NASD members executing principal transactions in non-Nasdaq securities to report price and volume data for the days on which their sales or purchases exceeded 50,000 shares or \$10,000. In 1993, member obligations under Schedule H were modified or eliminated as a result of the NASD adopting real-time reporting of transactions for non-Nasdaq securities. See Securities Exchange Act Release No. 32647 (July 16, 1993), 58 FR 39262 (July 22, 1993).

⁵On March 31, 1997, the SEC granted permanent approval of the OTC Bulletin Board. See Securities Exchange Act Release No. 38456 (March 31, 1997), 62 FR 16635 (April 7, 1997).

⁶See Securities Exchange Act Release No. 27975 (May 1, 1990), 55 FR 19123 (May 8, 1990).

⁷See Securities Exchange Act Release No. 29261 (May 31, 1991), 56 FR 29297 (June 26, 1991).

⁸See Securities Exchange Act Release No. 32647 (July 16, 1993), 58 FR 39262 (July 22, 1993).

⁹On October 15, 1990, the Securities Enforcement Remedies and Penny Stock Reform Act of 1990 ("Reform Act") was signed into law. Among other things, the Reform Act amended the Exchange Act by adding new Section 17B, which requires the Commission to facilitate the development of one or more automated quotation systems for the collection and dissemination of information for all penny stocks.

¹⁰See Rules 15g-1 through 15g-9 under the Act, 17 CFR 240.15g-1 through 240.15g-90.

¹¹Penny Stock is defined under Rule 3a51-1 of the Act, 17 CFR 240.3a51-1.

Certain Foreign Securities Listed on a Foreign Exchange

Questions have been raised about the application of the Three Quote Rule to the execution of customer transactions in securities that are traded on certain foreign exchanges, but not United States exchanges. Because the Three Quote Rule applies to transactions in all non-Nasdaq securities,¹² which are defined to exclude securities traded only on a "national securities exchange," the rule by its terms applies to transactions effected on any foreign exchange.¹³ For example, where a member firm's customer places an agency order to buy or sell a foreign security listed on a foreign exchange, the Three Quote Rule would require that the member broker-dealer contact at least three dealers and obtain quotations prior to executing the agency trade.¹⁴ In some circumstances, it is argued, the exchange market may constitute the best market for the securities that are listed on that market, and the time delay involved in contacting three dealers in advance of a customer transaction could hinder obtaining the best execution for the customer.

Nature of Customer

The nature of particular classes of customers may be another factor in determining whether an exemption is appropriate. In some circumstances, for example, an institutional customer may prefer not to inform or broadcast to other intermediaries or market professionals its particular intent to buy or sell a particular non-Nasdaq security. Under these circumstances, when a member broker-dealer contacts three other dealers in collecting quotations, as required by the Rule, in certain markets, this activity may trigger or invite additional market activity by the parties contacted or others that may affect the market price of the subject security.

Procedures in Exercising Exemptive Authority

It is important to note that the grant of an exemption to the Three Quote

¹² Non-Nasdaq security is defined in NASD Rule 6710 as "any equity security that is neither included in the Nasdaq Stock Market nor traded on any national securities exchange * * *"

¹³ The term "national securities exchange" is not defined in NASD rules, but the requirements to qualify are set forth in Sections 6(a) and 19(a) of the Act.

¹⁴ If a transaction is subject to the Three Quote Rule (NASD Rule 2320(g)), then for books and records purposes NASD Rule 3110(b)(2) requires that "a person associated with a member shall indicate on the memorandum for each transaction in a non-Nasdaq security * * * the name of each dealer contacted and the quotation received to determine the best inter-dealer market."

Rule would not limit a member's best execution obligation. The staff expects that the range of circumstances in which exemptions may be granted would be limited to those circumstances in which it can be shown that the Three Quote Rule would in fact hinder a member's best execution obligation.

The Office of the General Counsel of NASD Regulation would be responsible for strict compliance with discharging this exemptive authority. Member broker-dealers would be instructed to submit all requests for exemptions to the Office of General Counsel, NASD Regulation, and would be required to limit the requests to actual contemplated transactions or situations. The staff will not provide exemptions in response to hypothetical situations or transactions. The request should be detailed and include all relevant information necessary for the staff to reach a determination on the request. If a particular exemption involves a particular class of transactions or class of customers that may be relevant to other member broker-dealers, the staff will also publish such results to the membership through a Notice to Members or similar publication or broadcast.

Staff determination will be subject to review by the National Business Conduct Committee.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with Sections 11A(a)(1)(C),¹⁵ 15A(b) (6),¹⁶ and 15A(b) (9)¹⁷ of the Act. Section 11A(a) (1) (C) provides that it is in the public interest to, among other things, assure the economically efficient execution of securities transactions. Section 15A(b) (6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and 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. Section 15A(b) (9) requires that rules of an Association not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

¹⁵ 15 U.S.C. 78k-1(a)(1)(C).

¹⁶ 15 U.S.C. 78o-3(b)(6).

¹⁷ 15 U.S.C. 78o-3(b)(9).

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

NASD does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

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

Within 35 days of the 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 the 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. In particular, the Commission wishes to solicit comment on whether an exemption from the three quote rule should be available on an individual market maker basis, or whether an exemption should only be available for all market makers in a particular security or class of securities. Also, the Commission is soliciting comment on the ability of market makers to monitor and report on the quality of their customers' executions in securities that have been exempted from the Three Quote Rule. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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 at 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-97-42 and should be submitted by September 11, 1997.

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

Margaret H. McFarland,

Deputy Secretary.

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SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Collection Requests

This notice lists information collection packages that will require submission to the Office of Management and Budget (OMB), in compliance with Public Law 104-13 effective October 1, 1995. The Paperwork Reduction Act of 1995.

1. Electronic Request for Replacement SSA-1099/SSA-1042-0960-NEW. The information requested will be used by the Social Security Administration (SSA) to provide replacement copies of Forms SSA-1099/SSA-1042 needed to prepare Federal tax returns. Over 700,000 requests are received annually for replacement forms from Social Security beneficiaries by SSA field offices and teleservice centers. We intend to offer the public the option to use the Internet to request that SSA mail to them a replacement SSA-1099/SSA-1042, eliminating the need for a phone call to a teleservice center or a visit to a field office. The respondents are Title II Social Security beneficiaries.

Number of Respondents: 7,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 583 hours.

2. Discrimination Complaint Form-0960-NEW. The information collected on form SSA-437 will be used by SSA to investigate and informally resolve complaints of discrimination based on race, color, national origin, sex, age, religion and retaliation in any program or activity conducted by SSA. A person who believes that he or she has been discriminated against on any of the above bases may file a written complaint of discrimination. The information will be used to identify the complainant; identify the alleged discriminatory act; ascertain the date of the alleged act; obtain the identity of the individual(s)/facility/component that allegedly discriminated; and ascertain other relevant information that would assist in the investigation and resolution of the complaints. The respondents are

individuals who allege discrimination on the grounds described above.

Number of Respondents: 250.

Frequency of Response: 1.

Average Burden Per Response: 1 hour.

Estimated Annual Burden: 250 hours.

3. Beneficiary Recontact Report-0960-0536. SSA uses the information collected on form SSA-1587-OCR-SM to ensure that eligibility for benefits continues after entitlement is established for children ages 15 through 17. Studies show that children who marry fail to report the marriage (which is a terminating event). SSA asks children ages 15, 16 and 17 information about marital status to detect overpayments and to avoid continuing payments to those no longer entitled. The respondents are applicants for Title II benefits, ages 15 through 17.

Number of Respondents: 835,492.

Frequency of Response: 1.

Average Burden Per Response: 3 minutes.

Estimated Annual Burden: 41,775 hours.

4. Waiver of Right to Appear, Disability Hearing-0960-0534. Form SSA-773-U4 is used by claimants to request waiver of their right to appear at a disability hearing. The information collected will be used to document that claimants understand their right to appear and the effects of their decision to waive that right. The respondents are claimants who wish to waive their right to appear at a disability hearing, under Titles II and XVI of the Social Security Act.

Number of Respondents: 194.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 48 hours.

Written comments and recommendations regarding the information collection(s) should be sent within 60 days from the date of this publication, directly to the SSA Reports Clearance Officer at the following address: Social Security Administration, DCFAM, Attn: Nicholas E. Tagliareni, 6401 Security Blvd., 1-A-21 Operations Bldg., Baltimore, MD 21235.

In addition to your comments on the accuracy of the Agency's burden estimate, we are soliciting comments on the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

To receive a copy of any of the forms or clearance packages, call the SSA Reports Clearance Officer on (410) 965-4125 or write to him at the address listed above.

Dated: August 15, 1997.

Nicholas E. Tagliareni,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 97-22170 Filed 8-20-97; 8:45 am]

BILLING CODE 4190-29-U

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1995, as Amended by Public Law 104-13; Submission for OMB Review; Comment Request

AGENCY: Tennessee Valley Authority.

ACTION: Submission for OMB review; comment request.

SUMMARY: The proposed information collection described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). The Tennessee Valley Authority is soliciting public comments on this proposed collection as provided by 5 CFR 1320.8(d)(1). Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Acting Agency Clearance Officer: Wilma H. McCauley, Tennessee Valley Authority, 1101 Market Street (WR 4Q), Chattanooga, Tennessee 37402-2801; (423) 751-2523.

Comments should be sent to OMB Office of Information and Regulatory Affairs, Attention: Desk Officer for Tennessee Valley Authority no later than September 22, 1997.

SUPPLEMENTARY INFORMATION:

Type of Request: Regular submission, proposal to extend without revision a currently approved collection of information (OMB control number 3316-0019).

Title of Information Collection: Energy Right Residential Program.

Frequency of Use: On occasion.

Type of Affected Public: Individuals or households.

Small Business or Organizations Affected: No.

Federal Budget Functional Category Code: 271.

Estimated Number of Annual Responses: 12,000.

Estimated Total Annual Burden Hours: 3,600.

Estimated Average Burden Hours Per Response: 3.

This information is used by distributors of TVA power to assist in identifying and financing energy