

Shaswat Das
Assistant General Counsel

Direct: (202) 728-8191
Fax: (202) 728-8264



July 27, 2007

Ms. Catherine McGuire
Chief Counsel
Division of Market Regulation
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Statutory Disqualifications

Dear Ms. McGuire:

NASD respectfully requests that the staff of the Division of Market Regulation (“Staff”) of the Securities and Exchange Commission (“SEC” or “Commission”) provide assurances that it will not recommend enforcement action to the Commission pursuant to Section 15A(g)(2) or Rule 19h-1(a) of the Securities Exchange Act of 1934 (“Exchange Act”) if NASD does not file notice with the Commission for a limited class of persons that NASD proposes to admit to or continue in membership or association with a member, notwithstanding specific statutory disqualifications, as described herein.

NASD recently filed with the Commission a proposed rule change to amend the NASD By-Laws to implement certain governance and related changes to effectuate the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. (“NYSE Regulation”).¹ The proposed rule change also makes limited conforming changes to the NASD By-Laws.

Among other things, the proposed rule change amends the definition of “disqualification” in the NASD By-Laws to conform to the federal securities laws, such that any person subject to a statutory disqualification, as set forth in Section 3(a)(39) of the Exchange Act, also would be subject to disqualification under NASD rules. The revised definition of “disqualification” will cause a limited number of individuals to be subject to NASD eligibility proceedings for persons subject to disqualification (i.e., NASD Rule 9520),

¹ See Securities Exchange Act Release No. 55495 (March 20, 2007); 72 FR 14149 (March 26, 2007) (SR–NASD–2007–023). See also Securities Exchange Act Release No. 56145 (July 26, 2007) (SEC Order Approving SR-NASD-2007-023).

Ms. Catherine McGuire
July 27, 2007
Page 2

who were not subject to those proceedings before the definitional change. The proposed rule change becomes effective upon the closing of the consolidation transaction.

Concurrent with the consolidation of NASD and NYSE Regulation regulatory functions, NASD has been in the process of updating and improving the efficiency of its eligibility proceedings for persons subject to disqualification. As part of this effort, NASD will be filing subsequent rule changes to address the applicable eligibility proceedings, including those governing the limited class of persons subject to disqualification as a result of the definitional change. We expect to make this filing within 90 days of closing of the consolidation transaction. However, until the eligibility rule changes are adopted, NASD will not have the necessary procedures in place for such persons.

Consequently, we seek the above-referenced no-action relief for the transitional period between the time the amended NASD By-Laws become effective and the effective date of the related eligibility procedures. This relief is requested only with regard to notice filings for the limited class of persons subject to a statutory disqualification as a result of the revised definition of "disqualification."² NASD's treatment of persons who had been subject to a statutory disqualification before the revised definition was in effect would not be affected by this relief.

We appreciate the Staff's consideration of this request. If there are any questions, please contact me at 202-728-8191, or Patrice Gliniecki, Senior Vice President and Deputy General Counsel, at 202-728-8014.

Sincerely,



Shaswat K. Das

cc: Brian Bussey

² NASD will continue to file the notices required under Rule 19h-1(a) of the Exchange Act for those persons subject to statutory disqualifications under the current definition of "disqualification" in the NASD By-Laws.