Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). 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 in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2005–047 and should be submitted on or before January 17, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Jonathan G. Katz,

Secretary.

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[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52980; File No. SR–NASD–2005–134]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Status of Registered Persons and Sole Proprietors Serving in the Armed Forces of the United States

December 19, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 15, 2005, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. NASD has designated the proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization pursuant to Section 19(b)(3)(A)(i) of the Act[3] and Rule 19b–4(f)(1) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

NASD is proposing to amend NASD IM–1000–2 to (1) clarify that the scope of the relief provided in the IM extends to any registered person of a firm who volunteers for or is called into active military duty, not just registered representatives; (2) codify the staff's existing interpretation with respect to the receipt of transaction-related compensation by registered persons who volunteer for or are called into active military duty; (3) clarify that the relief provided to a registered person of a firm who volunteers for or is called into active military duty is available to the person during the period that such person remains registered with the firm, regardless of whether the person returns to employment at a different firm upon completion of his or her active military duty; and (4) clarify that the ''inactive'' status designation is available to registered persons and sole proprietors who volunteer for or are called into active duty in the Armed Forces of the United States and is available to them only while they remain on active military duty.

Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in [brackets].

* * * * *

B. SCHEDULE A TO NASD BY-LAWS

* * * * *

IM–1000–2. Status of [Sole Proprietors and Registered Representatives] *Persons* Serving in the Armed Forces *of the United States*

(a) Inactive Status of Currently Registered Persons

(1) A[ny] [R]registered [Representative] *person* of a member who volunteers *for* or is called into active duty in the Armed Forces of the United States shall be placed, after proper notification to [the Executive Office] *NASD,* upon inactive status and need not be re-registered by such member upon his or her return to active employment with the member. *Such a person will remain eligible to receive transaction-related compensation, including continuing commissions, because he or she remains registered with a member of NASD. The employing member also may allow such a person to enter into an arrangement with another registered person of the member to take over and service the person's accounts and to share transaction-related compensation based upon the business generated by such accounts. However, since such persons are inactive, they may not perform any of the duties performed by a registered person.*

[Any member (Sole Proprietor) who temporarily closes his or her business by reason of volunteering or being called into the Armed Forces of the United States, shall be placed, after proper notification to the Executive Office, on inactive status until his or her return to active participation in the investment banking and securities business.]

(*2*) A [R]registered [Representative] *person* who is placed on inactive status [as set forth above] *pursuant to this paragraph (a)* shall not be included within the definition of ''Personnel'' for purposes of the dues or assessments as provided in Article VI of the *NASD* By-Laws.

[Any member placed on inactive status as set forth above shall not be required to pay dues or assessments during the pendency of such inactive status and shall not be required to pay an admission fee upon return to active participation in the investment banking and securities business.]

(3) A [R]registered [Representative] *person* who is placed on inactive status [as set forth above] *pursuant to this paragraph (a)* shall not be required to complete either of the Regulatory or Firm Elements of the continuing education requirements set forth in Rule 1120 during the pendency of such inactive status.

(4) The relief provided in subparagraphs (a)(1), (a)(2), and (a)(3) shall be available to a registered person who is placed on inactive status pursuant to this paragraph (a) during the period that such a person remains registered with the member with which he or she was registered at the beginning of active duty in the Armed Forces of the United States, regardless of whether the person returns to active employment with another member upon completion

of his or her active duty in the Armed Forces of the United States.

(5) The relief described in this paragraph (a) will be provided only to a person registered with a member and only while the person remains on active military duty.

(b) Inactive Status of Sole Proprietorships

(1) A member that is a sole proprietor who temporarily closes his or her business by reason of volunteering for or being called into active duty in the Armed Forces of the United States, shall be placed, after proper notification to NASD, on inactive status while the member remains on active military duty.

(2) A sole proprietor member placed on inactive status as set forth in this paragraph (b) shall not be required to pay dues or assessments during the pendency of such inactive status and shall not be required to pay an admission fee upon return to active participation in the investment banking and securities business.

(3) The relief described in this paragraph (b) will be provided only to a sole proprietor member and only while the person remains on active military duty.

* * * * *

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

In its filing with the Commission, NASD 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. NASD 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

Since the September 11, 2001 attacks, NASD has provided tailored regulatory relief to securities industry professionals who volunteer for or are called into active military duty. Most notably, in January 2002, NASD filed with the SEC for immediate effectiveness a rule change that amended NASD IM–1000–2 to codify the staff's position regarding the relief from NASD Rule 1120 (Continuing Education Requirements) for securities industry professionals who volunteer for or are called into active military duty.[5]

NASD IM–1000–2 currently permits a firm to place a registered representative on ''inactive'' status while serving in the Armed Forces of the United States. Such ''inactive'' status excuses a registered representative from continuing education obligations, waives dues and assessments, and ensures that he or she is not subject to the two-year expiration period for securities licenses of persons who cease to be registered with a member (''two-year licensing expiration provisions'').[6]

Additionally, following discussions with the SEC staff, NASD published on its Web site guidance that provides that ''inactive'' registered persons serving in the Armed Forces of the United States may receive transaction-related compensation, provided that they do not perform any functions of a registered person while on ''inactive'' status.[7]

NASD has recently received requests for further clarification on the scope of NASD IM–1000–2 and the accompanying guidance. In particular, members have questioned whether the IM applies to registered persons other than registered representatives and whether registered persons can receive commissions on accounts that have been temporarily re-assigned in their absence. Members also have questioned the manner in which the relief applies if a registered person seeks employment with a different member upon completing active military duty.[8]

In response, NASD is proposing the following amendments to NASD IM–1000–2 to clarify its scope and codify NASD's existing guidance with respect to the receipt of transaction-related compensation by registered persons actively serving in the Armed Forces of the United States.

First, NASD is proposing to amend NASD IM–1000–2 to clarify that the scope of the relief provided in the IM extends to any registered person of a member who volunteers for or is called into active military duty, not just registered representatives.

Second, NASD is proposing to amend NASD IM–1000–2 to expressly state that a registered person of a member who volunteers for or is called into active duty in the Armed Forces of the United States and who is placed on ''inactive'' status will remain eligible to receive transaction-related compensation, including continuing commissions, because he or she remains registered with a member of NASD. In addition, NASD is proposing to amend NASD IM–1000–2 to provide that an employing member may allow such a person to enter into an arrangement with another registered person of the member to take over and service the person's accounts and to share transaction-related compensation based upon the business generated by such accounts. NASD also is proposing to amend NASD IM–1000–2 to state that such ''inactive'' persons may not perform any of the duties performed by a registered person. As noted above, the proposed amendments are consistent with NASD's existing interpretation with respect to the receipt of transaction-related compensation by registered persons actively serving in the Armed Forces of the United States, as well as the NYSE's interpretation to NYSE Rule 345(a).[9]

Third, NASD is proposing to amend NASD IM–1000–2 to clarify that the

[5] *See* Securities Exchange Act Release No. 45259 (January 9, 2002), 67 FR 2256 (January 16, 2002) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Relieve Registered Representatives Serving in the Armed Forces From Continuing Education Requirements) (SR–NASD–2002–03).

[6] NASD Rules 1021(c), 1031(c), and 1041(c) provide that if a person does not register with a member within two years of his or her last registration, his or her qualification as a principal, representative, or assistant representative will lapse and the person must then retest to function as a principal, representative, or assistant representative. In the case of a person on ''inactive'' status due to active military duty, because he or she is considered registered for purposes of NASD Rules, the ''two-year licensing expiration provisions'' do not apply.

[7] *See Registered Persons on Active Military Duty* (available at: *http://www.nasd.com/web/idcplg?IdcService=SS_GET_PAGE&ssDocName=NASDW_014635&ssSourceNodeId=1091*). The NASD staff's interpretation with respect to the receipt of transaction-related compensation by registered persons serving in the Armed Forces of the United States is consistent with the New York Stock Exchange, Inc.'s (''NYSE'') interpretation to NYSE Rule 345(a), which the NYSE codified in June 2002. *See* NYSE Interpretation Handbook, NYSE Rule 345(a)/03. Telephone conversation between Mia Zur, Attorney, Jan Woo, Attorney, Division, Commission, and Afshin Atabaki, Counsel, NASD, dated December 8, 2005.

[8] Some members have questioned whether the return of a registered person who volunteers for or is called into active military duty to employment at a different member would negate or invalidate the relief the person has received while being deemed ''inactive'' at his original employing member.

[9] The relief regarding the ongoing receipt of transaction-based compensation does not extend to a sole proprietor member placed on ''inactive'' status pursuant to NASD IM–1000–2. Rather, consistent with current practice, NASD staff, in consultation with SEC staff, will address such issues in the context of a sole proprietor member placed on ''inactive'' status on a case-by-case basis. *See* NYSE Interpretation Handbook, NYSE Rule 345(a)/03. Telephone conversation between Mia Zur, Attorney, Jan Woo, Attorney, Division, Commission, and Afshin Atabaki, Counsel, NASD, dated December 8, 2005.

relief provided to a registered person of a member who volunteers for or is called into active military duty is available to the person during the period that such person remains registered with the member, regardless of whether the person returns to employment at a different member upon completion of his or her active military duty. Accordingly, under the proposal, NASD will not rescind the relief provided to such a person simply because he or she decides to register with another member upon completion of his or her active military duty. For instance, if a registered person of Firm Y who volunteers for or is called into active military duty and who is placed on ''inactive'' status with Firm Y decides to register with Firm Z upon completion of her active military duty, NASD will not invalidate the relief that was provided to the person while on ''inactive'' status with Firm Y.

Fourth, NASD is proposing to amend NASD IM–1000–2 to clarify that the ''inactive'' status designation is available to registered persons and sole proprietors who volunteer for or are called into active duty in the Armed Forces of the United States and is available to them only while they remain on active military duty. Therefore, under the proposal, a registered person who is placed on ''inactive'' status pursuant to NASD IM–1000–2 will be removed from ''inactive'' status if the person ceases to be registered with a member while serving in the Armed Forces of the United States.[10] If he or she re-registers with a member while still serving in the Armed Forces of the United States, he or she will again be eligible for ''inactive'' status pursuant to the IM. Further, under the proposal, a registered person or sole proprietor who is placed on ''inactive'' status pursuant to NASD IM–1000–2 will be removed from ''inactive'' status if the registered person or sole proprietor is no longer on active military duty.

NASD is proposing to implement the proposed rule change immediately upon filing with the Commission.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[11] which requires, among other things, that NASD's rules must be 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. NASD believes that the proposed rule change provides appropriate tailored relief to persons actively serving in the Armed Forces of the United States in a manner consistent with NASD's goals of investor protection and market integrity.

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

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Written comments were neither solicited nor received.

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

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act[12] and Rule 19b–4(f)(1) thereunder,[13] in that the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization. NASD has proposed to implement the rule change immediately upon filing with the Commission. NASD will announce the proposed rule change in a *Notice to Members* to be published no later than 60 days after SEC Notice of this filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASD–2005–134 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NASD–2005–134. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). 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 in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2005–134 and should be submitted on or before January 17, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–7839 Filed 12–23–05; 8:45 am]

BILLING CODE 8010–01–P

[10] In conjunction with this filing, NASD is filing a proposed rule change with the Commission to address the status of persons who terminate their registration with a member while on active military duty and persons who commence their active military duty within two years after they have ceased to be registered with a member, including the application of the ''two-year licensing expiration provisions'' to such persons. *See* SR–NASD–2005–135.

[11] 15 U.S.C. 78o–3(b)(6).

[12] 15 U.S.C. 78s(b)(3)(A)(i).

[13] 17 CFR 240.19b–4(f)(1).

[14] 17 CFR 200.30–3(a)(12).