

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-56179; File No. SR-NASD-2007-034)

August 1, 2007

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change as Modified by Amendment No. 1 Creating NASD Rule 1160 (Firm Contact Information) Regarding the Reporting and Annual Review of Designated Contact Information to NASD

I. Introduction

On May 11, 2007, the National Association of Securities Dealers, Inc. (“NASD”) filed with the Securities and Exchange Commission (“Commission”) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change seeking to adopt new NASD Rule 1160 (Firm Contact Information) regarding the reporting of designated contact information to NASD and the annual review of such information. The proposed rule change also proposed amendments to Rule 1120 (Continuing Education Requirements), Rule 1150 (Executive Representative), Interpretive Material (IM)-3011-2 (Review of Anti-Money Laundering Compliance Person Information), and Rule 3520 (Emergency Contact Information) to eliminate the requirement that members review and update, at the end of each calendar quarter, the contact information required by these rules.

The proposed rule change was published for comment in the Federal Register on May 31, 2007.<sup>3</sup> The Commission received two comment letters on the proposal.<sup>4</sup> On July 27, 2007,

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 55810 (May 24, 2007), 72 FR 30404.

<sup>4</sup> See letter to Nancy Morris, Secretary, Commission, from Lisa Roth, Members Advocacy Chairman, National Association of Independent Broker-Dealers (“NAIBD”), dated June

NASD filed Amendment No. 1 to the proposed rule change.<sup>5</sup> This order approves the proposed rule change, as amended.

## II. Description of the Proposal

Currently, there are several NASD rules requiring firms to identify and report to NASD certain designated contact persons: Rule 1120 (Continuing Education Requirements); Rule 1150 (Executive Representative); IM-3011-2 (Review of Anti-Money Laundering Compliance Person Information); and Rule 3520 (Emergency Contact Information). These rules further require firms to review the contact information at the end of each calendar quarter, and if necessary, update such information within 17 business days after the end of each quarter. Members review this information and provide any updates online via the NASD Contact System (“NCS”).<sup>6</sup>

Based on recommendations made by its Small Firm Rules Impact Task Force,<sup>7</sup> NASD has proposed to eliminate these quarterly review requirements in favor of a more comprehensive approach for verifying and updating all contact information required to be reported. Specifically, proposed new Rule 1160 would require members to provide the required contact information via NCS or such other means as NASD may specify. New Rule 1160 also would require members

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13, 2007; letter from Kenneth M. Cherrier, JD, Chief Compliance Officer, Fintegra Financial Solutions (“Fintegra”), dated June 21, 2007.

<sup>5</sup> In Amendment No. 1, NASD responded to comments and made a technical correction to the proposed rule text. This is a technical amendment and is not subject to notice and comment.

<sup>6</sup> NASD also currently requires each firm to report, via NCS, contact information for its Executive Officer and the Head of Compliance. NCS also includes several optional fields for other contact persons.

<sup>7</sup> NASD established the Small Firm Rules Impact Task Force in September 2006 to examine how existing NASD rules affect smaller firms. In particular, the Task Force focuses on possible opportunities to amend or modernize certain conduct rules that may be particularly burdensome for small firms, where such changes are consistent with investor protection and market integrity.

to update the contact information promptly, but in any event not later than 30 days following any change in such information, as well as to review and, if necessary, update the information within 17 business days after the end of each calendar year. In addition, the rule would require members to comply with any NASD request for such information promptly, but in any event not later than 15 days following the request, or such longer period that may be agreed to by NASD staff. The proposed rule change would not relieve members from any separate requirements to update such information.<sup>8</sup>

The proposed rule change also would amend Rule 3520 to eliminate the requirement that only a firm's Executive Representative, or his or her written designee, be permitted to review and update the firm's emergency contact information

The effective date of these proposed changes would be December 31, 2007.

### III. Comment Summary

Two comment letters were received on the proposed rule change.<sup>9</sup> NASD responded to these comment letters in Amendment No. 1.<sup>10</sup> Both commenters endorsed replacing the current quarterly verification requirement with an annual obligation. Fintegra praised the efficiencies that would result from that aspect of the proposal, while NAIBD noted that an annual verification requirement was more consistent with the infrequent changes in contact information generally

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<sup>8</sup> For example, a firm must identify, among others, its Chief Executive Officer and Chief Compliance Officer on Form BD, and promptly update such information by submitting an amendment whenever the information becomes inaccurate or incomplete for any reason. See also Article IV, Section 1(c) of the NASD By-Laws, requiring each member to ensure that its membership application is kept current at all times by supplementary amendments, and to file any such amendment no later than 30 days after learning of the facts or circumstances giving rise to the amendment.

<sup>9</sup> See note 4, supra.

<sup>10</sup> See note 5, supra.

experienced at most member firms.

NAIBD, however, suggested that the requirement to update information when a change occurs remain a quarterly requirement, rather than the proposed 30-day requirement, stating that some firms' electronic filing systems and reminders have been programmed to accommodate a systemic quarterly update. In response, NASD noted that, at least with respect to Rule 1120, IM-3011-2, and Rule 3520, firms currently are required to "promptly" update such information in the event of a change, in addition to being required to review, and if necessary, update the designated contact information on a quarterly basis.<sup>11</sup> In proposing new Rule 1160, NASD explained that it is seeking to clarify the requirement that firms both promptly update such information upon any change, as well as verify the accuracy of the required contact information on an annual basis. Further, NASD noted that it is seeking to clarify that any such updates must occur not later than 30 days following the change.

Fintegra objected to proposed Rule 1160's 17-business-day time frame for members to verify and update their required contact information after the end of each calendar year. Fintegra suggested that the time frame be shortened to 15 days to align it with the provision in proposed Rule 1160 that would require members to promptly comply with any NASD request for such contact information, but no later than 15 days following the request. The commenter stated that consistent time frames would simplify adherence to the proposed rule and that there appeared to be no justification for the differing compliance timelines.

In response to this comment, NASD explained that the two time periods serve different

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<sup>11</sup> See Rule 1120(a)(7) (Regulatory Element Contact Person), Rule 3011(d) (Anti-Money Laundering Compliance Program), and Rule 3520(b) (Emergency Contact Information). See also Article IV, Section 3 of the NASD By-Laws, addressing procedures for members to change their Executive Representatives.

purposes, and that retaining the 17-business-day window for the annual verification will aid members' compliance efforts. NASD stated that firms currently are required to update such information within 17 business days following each quarter,<sup>12</sup> and therefore are already familiar with the proposed end of year schedule. In addition, NASD noted that the 17-business-day window is consistent with the requirement that a member's FOCUS report be submitted within 17 business days after the end of each calendar quarter. Currently, when members file FOCUS reports each quarter, NASD reminds them of the need to review and update their designated contact information on NCS. NASD represented that it intends to continue this practice, and will remind members of the need to verify the required contact information at the time they file their fourth quarter FOCUS report.

#### IV. Discussion

After careful consideration of the proposal, the comment letters, and NASD's response thereto, the Commission finds that the proposed rule change is consistent with the provisions of Section 15A of the Act,<sup>13</sup> in general and with Section 15A(b)(6) of the Act,<sup>14</sup> in particular, which requires, among other things, that NASD 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.<sup>15</sup>

The Commission believes that the proposed rule change sets forth a reasonable approach

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<sup>12</sup> See Rule 1120(a)(7); Rule 1150; IM-3011-2; Rule 3520(b) (all requiring members to update the contact information required by the respective rules within 17 business days after the end of each calendar quarter).

<sup>13</sup> 15 U.S.C. 78o-3.

<sup>14</sup> 15 U.S.C. 78o-3(b)(6).

<sup>15</sup> In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

for member firms to provide and keep current required contact information, which should reduce unnecessary burdens on firms by eliminating the requirement that firms review and update the contact information on a quarterly basis; instead, firms would be required to conduct such reviews on an annual basis as well as to promptly update the information following any change. The proposed rule change should also assure NASD's ability to contact its members in the event of an emergency, as well as support members' compliance with certain NASD rules, such as continuing education requirements and anti-money laundering obligations, and facilitate member voting through the Executive Representatives.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>16</sup> that the proposed rule change (SR-NASD-2007-034), as amended, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>17</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>16</sup> 15 U.S.C. 78s(b)(2).

<sup>17</sup> 17 CFR 200.30-3(a)(12).