

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53509; File No. SR-NASD-2006-036)

March 17, 2006

Self Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to Certification by the Chief Executive Officer under NASD Interpretive Material 3013

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 March 7, 2006, 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 and II below, which Items have been prepared by NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. In addition, the Commission is granting accelerated approval of the proposed rule change for the reasons discussed below.

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

NASD is proposing to amend NASD Interpretive Material 3013 (“IM-3013”) to clearly establish the timing with respect to the requirement to submit to the member’s board of directors and audit committee a report that evidences certain processes that form the basis of a certification by the Chief Executive Officer (“CEO”) under Rule 3013.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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**3000. RESPONSIBILITIES RELATING TO ASSOCIATED PERSONS,
EMPLOYEES, AND OTHERS' EMPLOYEES**

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IM-3013. Annual Compliance and Supervision Certification

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Annual Compliance and Supervision Certification

The undersigned is the chief executive officer (or equivalent officer) of [name of member corporation/partnership/sole proprietorship] (the "Member"). As required by NASD Rule 3013(b), the undersigned makes the following certification:

1. through 2. No change.

3. The Member's processes, with respect to paragraph 1 above, are evidenced in a report reviewed by the chief executive officer (or equivalent officer), chief compliance officer, and such other officers as the Member may deem necessary to make this certification[[], and]]. The final report has been submitted to the Member's board of directors and audit committee or will be submitted to the Member's board of directors and audit committee (or equivalent bodies) at the earlier of their next scheduled meetings or within 45 days of the date of execution of this certification.

4. No change.

* * * * *

The report required in paragraph 3 of the certification must document the member's processes for establishing, maintaining, reviewing, testing and modifying compliance policies, that are reasonably designed to achieve compliance with applicable

NASD rules, MSRB rules and federal securities laws and regulations, and any principal designated by the member may prepare the report. The report must be produced prior to execution of the certification and be reviewed by the chief executive officer (or equivalent officer), chief compliance officer and any other officers the member deems necessary to make the certification and must be provided to the member's board of directors and audit committee in final form either prior to execution of the certification or at the earlier of their next scheduled meetings or within 45 days of execution of the certification. The report should include the manner and frequency in which the processes are administered, as well as the identification of officers and supervisors who have responsibility for such administration. The report need not contain any conclusions produced as a result of following the processes set forth therein. The report may be combined with any other compliance report or other similar report required by any other self-regulatory organization provided that (1) such report is clearly titled in a manner indicating that it is responsive to the requirements of the certification and this Interpretive Material; (2) a member that submits a report for review in response to an NASD request must submit the report in its entirety; and (3) the member makes such report in a timely manner, i.e., annually.

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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

NASD Rule 3013 requires each member's CEO or equivalent officer to certify annually that the member has in place processes to establish, maintain, review, modify, and test policies and procedures reasonably designed to achieve compliance with applicable NASD rules, MSRB rules and the federal securities laws and regulations. The rule is accompanied by IM-3013, which sets forth the actual certification language and provides additional guidance about the requirements of the rule and sets forth certain limitations to its scope. On October 14, 2005, NASD filed for immediate effectiveness amendments to Rule 3013 to extend until April 1, 2006, the date by which members must execute their first annual certification pursuant to Rule 3013 and IM-3013.³

The certification consists of four attestations, each set forth in a separate numbered paragraph within IM-3013. In paragraph 3 of the certification, the CEO attests that the member's processes are "evidenced in a report reviewed by the chief executive officer (or equivalent officer), chief compliance officer, and such other officers as the Member may deem necessary to make this certification, and submitted to the Member's board of directors and audit committee."

³ Securities Exchange Act Release No. 52727 (Nov. 3, 2005); 70 FR 68122 (Nov. 9, 2005) (SR-NASD-2005-121).

IM-3013 does not clearly specify whether a member may submit the report to its board of directors and audit committee⁴ after the CEO makes the certification, and NASD has interpreted the certification language to require a member to submit the report to those entities prior to certification. However, it was not NASD's intent to require the board of directors or audit committee to review or consider the report as a condition to the CEO executing the certification. Rather, the requirement that the report be submitted to the member's board of directors and audit committee was intended to ensure that those governing bodies remain informed of this aspect of the member's compliance system in the context of their overall responsibility for governance and internal controls of the member for which they serve. Accordingly, NASD sees no compelling reason to mandate that the report be submitted to the board of directors and audit committee prior to the CEO executing the certification, and therefore the proposed rule change would permit submission of the final report to these governing bodies to take place either before or after the execution of the certification, provided that the board of directors and audit committee receive the report at the earlier of their next scheduled meeting or within 45 days after execution of the certification.⁵ Importantly, the board of directors and audit

⁴ IM-3013 requires that members that do not utilize a board of directors or audit committee in the conduct of their business must, as a part of their process, have the report reviewed by their governing bodies and committees that serve similar functions.

⁵ New York Stock Exchange ("NYSE") Rule 342.30 also requires that each member (or member organization) file by April 1 of each year a report that addresses the member organization's supervision and compliance efforts during the preceding calendar year, as well as ongoing compliance processes and procedures. NYSE Rule 342.30. The report must include, among other things, a certification by the member or its Chief Executive Officer (or equivalent officer) that the member has processes in place, among other things, to establish and maintain policies and procedures reasonably designed to achieve compliance with

committee must receive the report in its final form regardless of whether the member elects to submit it to them before or after certification by the CEO.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,⁶ in general, and Section 15A(b)(6) of the Act,⁷ in particular, 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 will further the investor protection goals of the CEO certification requirement by ensuring timely receipt of the Rule 3013 report by a member's board of directors and audit committee and by providing further clarity to the application of the Rule 3013 in its accompanying interpretive material.

applicable Exchange rules and federal securities laws and regulations. NYSE Rule 342.30(e). This certification must be submitted to the member's board of directors and audit committee (if such a committee exists). NYSE Rule 342.30(e)(iii).

The NYSE interprets the certification delivery requirement of Rule 342.30 more restrictively than NASD has proposed to interpret the comparable requirement in NASD Rule 3013. Specifically, Rule 342.30 requires the submittal of the report to the board and the audit committee prior to certification. NYSE Information Memo 06-08 (March 13, 2006). Firms that are dual members of NASD and the NYSE are subject to both NASD Rule 3013 and NYSE Rule 342.30 and must, therefore, comply with the more restrictive requirements of NYSE Rule 342.30. Telephone conversation between Patrice Gliniecki, Deputy General Counsel, NASD, and Richard Strasser, Acting Assistant Director, Market Regulation, Commission (March 16, 2006).

⁶ 15 U.S.C. 78o-3.

⁷ 15 U.S.C. 78o-3(b)(6).

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, as amended.

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. 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-2006-036 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASD-2006-036. 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, 100 F Street, NE, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of 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 the File Number SR-NASD-2006-036 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.⁸ Specifically, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,⁹ which requires, among other things, that

⁸ See supra note 6. In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁹ See supra note 7.

the rules of a national securities association 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. The Commission finds that the proposed rule change is consistent with the Act and, in particular, with Section 15A(b)(6) of the Act because the proposal should help to provide clarity with respect to the timing for the delivery of the report required by Rule 3013 while ensuring that the report is delivered to the member's board of directors and audit committee (or their equivalents) in a timely manner.

NASD has requested that the Commission find good cause for approving the proposed rule change prior to the 30th day after publication of notice thereof in the Federal Register. The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,¹⁰ for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in the Federal Register because it believes accelerated approval will reduce the burden of members that are currently in the process of taking the necessary steps to execute the first CEO certification, which is required to be made by April 1, 2006.¹¹ Moreover, the Commission does not believe that the proposal will reduce the investor protections that the certification requirement is intended to promote.

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ See Exchange Act Release No. 52727 (Nov. 3, 2005), 70 FR 68122 (Nov. 9, 2005) (SR-NASD-2005-121) (which, among other things, extended until April 1, 2006 the date by which members must execute their first annual certification pursuant to Rule 3013 and IM-3013).

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change (SR-NASD-2006-036), is hereby approved on an accelerated basis.

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

Nancy M. Morris

Secretary

¹² See supra note 10.

¹³ 17 CFR 200.30-3(a)(12).