

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-54319; File No. SR-NASD-2006-060)

August 15, 2006

Self-Regulatory Organizations: National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change to Require Members to File Regulatory Notices with NASD Electronically

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)<sup>1</sup> and Rule 19b-4 under the Act,<sup>2</sup> notice is given that on May 16, 2006, the National Association of Securities Dealers, Inc. (“NASD”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below. These items have been prepared by NASD. 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 proposes to adopt NASD Rule 3170 to provide NASD with the authority to require member firms to file or submit electronically with NASD any regulatory notice or other document that member firms are required to file with (or otherwise submit to) NASD. NASD may specify the electronic format to be used. The proposed rule change does not specify the particular regulatory notices or documents that NASD will require members to file electronically. Instead, NASD’s proposed rule change would give NASD authority to require members to file or submit electronically with NASD any specified regulatory notice or document. NASD plans to require members to file certain

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

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

specified notices with NASD via an electronic, Internet-based receiving and processing system (“System”), using templates developed by NASD for each notice. The System will be available to members on NASD’s Internet Web site.

Below is the text of the proposed rule change. Proposed new language is underlined.

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3170. Mandatory Electronic Filing Requirements

Each member shall be required to file with NASD, or otherwise submit to NASD, in such electronic format as NASD may require, all regulatory notices or other documents required to be filed or otherwise submitted to NASD, as specified by NASD.

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II. Self-Regulatory Organization’s Statement Concerning 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 the statements.

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

1. Purpose

The purpose of the proposed rule change is to provide NASD with the authority to require member firms to file or submit electronically with NASD any regulatory notice or other document that member firms are required to file with (or otherwise submit to) NASD. NASD may specify the electronic format to be used. The proposed rule change

does not specify the particular regulatory notices or documents that NASD will require members to file electronically. Instead, NASD's proposed rule change would give NASD authority to require members to file or submit electronically with NASD any specified regulatory notice or document.

Upon approval of the rule change, NASD will issue a Notice to Members and other member communications, as appropriate, to advise its members which regulatory notices or documents members will be required to file or submit electronically to NASD and the date on which electronic filing or submission of these notices or documents will be required. These communications will also advise members that as of the specified date, electronic filing or submission of the specified regulatory notices or documents will be mandatory, and that NASD will no longer accept facsimile or other non-electronic transmissions of these notices or documents.

NASD notes that, upon approval of the proposed rule change, NASD, as a member's designated examining authority, examining authority, or regulatory authority that examines the firm as to financial responsibility ("DEA"), plans to require members to file certain notices that must be filed with NASD under the following Exchange Act Rules electronically:<sup>3</sup>

- Rule 15c3-1(e) – Withdrawals of equity capital
- Rule 15c3-3(i) – Special Reserve Bank Account
- Rule 17a-4(f)(2)(i); Rule 17a-4(f)(3)(vii) – Electronic storage media

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<sup>3</sup> NASD has requested relief from the Commission with respect to these Exchange Act rules. Electronic filing of notices with NASD does not affect requirements in those rules to file notices with the Commission or other securities regulatory agencies.

- Rule 17a-5(f)(4) – Replacement of accountant
- Rule 17a-11(b) – Net capital deficiency
- Rule 17a-11(c)(1) – Aggregate indebtedness is in excess of 1200 percent of net capital
- Rule 17a-11(c)(2) – Net capital is less than 5 percent of aggregate debit items
- Rule 17a-11(c)(3) – Net capital is less than 120 percent of required minimum dollar amount
- Rule 17a-11(d) – Failure to make and keep current books and records
- Rule 17a-11(e) – Material inadequacy in accounting systems, internal controls, or practices and procedures

NASD members will be required to file these specified notices with NASD via an electronic, Internet-based receiving and processing system (“System”), using templates developed by NASD for each notice. The System will be available to members on NASD’s Internet Web site.

## 2. Statutory Basis

NASD believes that the proposed amendment to NYSE Rule 418 is consistent with Section 6(b) of the Act<sup>4</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act<sup>5</sup> in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanism of a free and open market and to protect investors and the public interest. NASD believes

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<sup>4</sup> 15 U.S.C. 78f(b).

<sup>5</sup> 15 U.S.C. 78f(b)(5).

that the electronic filing of notices is cost-saving and efficient and that it will enhance the speed and efficiency of processing the filings and reduce administrative costs.

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

Written comments were neither solicited nor received.

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

Pursuant to Section 19(b)(2) of the Act,<sup>6</sup> within 35 days of the date of 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 Exchange consents, the Commission will:

(A) by order approve such 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 proposed rule change, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

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<sup>6</sup> 15 U.S.C. 78f(b)(2).

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2006-060 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-2006-060. 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 Section, 100 F Street, Washington, DC 20549. Copies of the filings will also 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-2006-060 and should be submitted on or before [insert date 21 days from date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

Nancy M. Morris  
Secretary

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<sup>7</sup> 17 CFR 200.30-3(a)(12).