

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50192; File No. SR-NASD-2004-123)

August 13, 2004

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. to Delete IM-2210-4(b) and Rule Series 3400 as Obsolete

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4² thereunder, notice is hereby given that on August 10, 2004, 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, which Items have been prepared by NASD. NASD has designated the proposed rule change as "non-controversial" pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6)⁴ thereunder. 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 is proposing to delete as obsolete NASD IM-2210-4(b) (Certification of Membership) and NASD Rule Series 3400 (Computer Systems), which contains NASD Rule 3420 (Mandatory Decimal Pricing Testing). Below is the text of the proposed rule change.

Proposed deletions are in brackets.

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¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

IM-2210-4. Limitations on Use of NASD's Name

[(a) Statements of Membership]

Members may indicate NASD membership in conformity with Article XV, Section 2 of the NASD By-Laws in one or more of the following ways:

(1) in any communication with the public, provided that the communication complies with the applicable standards of Rule 2210 and neither states nor implies that NASD or any other regulatory organization endorses, indemnifies, or guarantees the member's business practices, selling methods, the class or type of securities offered, or any specific security;

(2) in a confirmation statement for an over-the-counter transaction that states:

"This transaction has been executed in conformity with the NASD Uniform Practice Code."

[(b) Certification of Membership]

Upon request to NASD, a member will be entitled to receive an appropriate certification of membership, which may be displayed in the principal office or a registered branch office of the member. The certification shall remain the property of NASD and must be returned by the member upon request of the NASD Board or its Chief Executive Officer.]

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[3400. COMPUTER SYSTEMS]

[3420. Mandatory Decimal Pricing Testing]

[(a) Clearing firms and market makers of the Association must conduct or participate in the testing of their computer systems to ascertain decimal pricing conversion compatibility of such systems in such manner and frequency as the Association may prescribe.]

[(b) Every clearing firm and market maker required by the Association to conduct or participate in testing of computer systems shall provide to the Association such reports relating to the testing as the Association may prescribe.]

[(c) Clearing firms and market makers shall maintain adequate documentation of tests required pursuant to this Rule and the results of such testing for examination by the Association.]

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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 statutory 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 is proposing to delete IM-2210-4(b) and Rule 3420 because NASD has determined that the provisions of IM-2210-4(b) and Rule 3420 are no longer applicable and, therefore, should be deleted as obsolete.

a. NASD IM-2210-4(b)

IM-2210-4(b) provides that, upon request to NASD, a member may receive an appropriate certification of membership. NASD represents that it no longer issues such certifications. NASD, therefore, proposes deleting IM-2210-4(b) as obsolete and amending IM-2210-4 to reflect subparagraph (a) as its only text.

b. NASD Rule 3420

On June 27, 2000, NASD adopted Rule 3420 (Mandatory Decimal Pricing Testing).⁵ Rule 3420, among other things, requires NASD clearing firms and market makers to conduct or participate in the securities industry's decimalization pricing tests of computer systems. NASD required such testing in compliance with the Commission's order for certain securities industry participants to develop plans for conversion to decimal pricing.⁶ NASD intended the testing to ascertain the decimal pricing conversion compatibility of its members' computer systems, and wanted to ensure that conversion to decimal pricing would occur successfully with minimal disruption of the markets and minimal impact on investors. Since the conversion to decimal pricing has occurred, NASD represents that it no longer requires its members to test their computer systems for any such decimal pricing conversion; therefore, NASD is proposing to delete Rule 3420 as obsolete.

In connection with the deletion of Rule 3420, NASD is also proposing to delete the heading in the NASD Manual to the Rule 3400 Series (Computer Systems). NASD represents that, upon the deletion of Rule 3420, the heading for the Rule 3400 Series will no longer be necessary since Rule 3420 is the only rule in the series.

NASD represents that it will announce the rule change in a Notice to Members to be published no later than 30 days following the publication of this notice in the Federal Register.

⁵ See Securities Exchange Act Release No. 43003 (June 30, 2000), 65 FR 43067 (July 12, 2000) (SR-NASD-2000-40).

⁶ See Securities Exchange Act Release No. 42360 (January 28, 2000), 65 FR 5003 (February 2, 2000).

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,⁷ in general, and with Section 15A(b)(6) of the Act,⁸ in particular, in that the proposed rule change is 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.

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

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

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

Written comments on the proposed rule change were neither solicited nor received.

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

NASD has designated the proposed rule change as "non-controversial" and a rule change that: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Therefore, the foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A) of the

⁷ 15 U.S.C. 78o-3.

⁸ 15 U.S.C. 78o-3(b)(6).

Act⁹ and Rule 19b-4(f)(6)¹⁰ thereunder.

Under Rule 19b-4(f)(6)(iii), a proposed "non-controversial" rule change does not become operative for 30 days after the date of filing, unless the Commission designates a shorter time. NASD has requested that the Commission waive the 30-day operative delay so that the proposed rule change will become immediately effective upon filing, since the provisions of IM-2210-4(b) and Rule 3420 are obsolete and no longer applicable. The Commission hereby waives the 30-day operative delay and believes such waiver is consistent with the protection of investors and the public interest.¹¹ The Commission notes that the relevant provisions of IM-2210-4(b) and Rule 3420 are obsolete and no longer applicable. Accelerating the operative date will allow the NASD to immediately reflect the currently applicable rules in the NASD Manual.

In addition, Rule 19b-4(f)(6) requires the self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. NASD complied with this requirement.

At any time within 60 days of the filing of such 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

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

furtherance of the purposes of the Act.¹²

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-2004-123 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-NASD-2004-123. 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 Section, 450 Fifth

¹² See 15 U.S.C. 78s(b)(3)(C).

Street, NW, 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 File Number SR-NASD-2004-123 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Margaret H. McFarland
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).