

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-51368; File No. SR-NASD-2005-004)

March 14, 2005

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Annual Compliance Meetings

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> notice is hereby given that on January 13, 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. On March 1, 2005, NASD filed Amendment No. 1 to the proposed rule change.<sup>3</sup> On March 9, 2005, NASD filed Amendment No. 2 to the proposed rule change.<sup>4</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

NASD proposes to amend NASD Rule 3010(a) to require that registered principals, in addition to registered representatives, attend an annual compliance meeting. NASD also is proposing a technical amendment to NASD Rule 3010(a) to clarify that each member is required

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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> In Amendment No. 1, the NASD further clarified that the scope of NASD Rules 3010(a), 3010(a)(3), and 3010(b)(1), specifically extends to registered representatives and registered principals, as well as other associated persons.

<sup>4</sup> In Amendment No. 2, the NASD filed a partial amendment to the proposed rule change to remove the underlining from the term “applicable NASD Rules” in NASD Rule 3010(a), as it is part of the existing rule text.

to establish and maintain a system to supervise the activities of each registered representative, registered principal, and other associated persons. Below is the text of the revised rule change.

Proposed new language is in italics; proposed deletions are in [brackets].

### 3010. Supervision

#### (a) Supervisory System

Each member shall establish and maintain a system to supervise the activities of each registered representative, registered principal, and other associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with applicable NASD Rules. Final responsibility for proper supervision shall rest with the member.

A member's supervisory system shall provide, at a minimum, for the following:

(1) through (2) No Change.

(3) The designation as an office of supervisory jurisdiction (OSJ) of each location that meets the definition contained in paragraph (g) of this Rule. Each member shall also designate such other OSJs as it determines to be necessary in order to supervise its registered representatives, registered principals, and other associated persons in accordance with the standards set forth in this Rule, taking into consideration the following factors:

(A) whether registered persons at the location engage in retail sales or other activities involving regular contact with public customers;

(B) whether a substantial number of registered persons conduct securities activities at, or are otherwise supervised from, such location;

(C) whether the location is geographically distant from another OSJ of the firm;

(D) whether the member's registered persons are geographically dispersed; and

(E) whether the securities activities at such location are diverse and/or complex.

(4) through (6) No Change.

(7) The participation of each registered representative and registered principal, either individually or collectively, no less than annually, in an interview or meeting conducted by persons designated by the member at which compliance matters relevant to the activities of the representative(s) and principal(s) are discussed. Such interview or meeting may occur in conjunction with the discussion of other matters and may be conducted at a central or regional location or at the representative's(?) or principal's(?) place of business.

(b) Written Procedures

(1) Each member shall establish, maintain, and enforce written procedures to supervise the types of business in which it engages and to supervise the activities of registered representatives, registered principals, and other associated persons that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with the applicable Rules of NASD [this Association].

(2) through (4) No Change.

(c) through (g) No Change.

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

1. Purpose

NASD proposes to amend NASD Rule 3010(a)(7) to require that registered principals, in addition to registered representatives, attend an annual compliance meeting. NASD Rule 3010(a)(7) currently requires the attendance of registered representatives at annual compliance meetings, but it does not require the attendance of registered principals. NASD believes that registered principals also should be required to attend such meetings given the supervisory and compliance-related functions that principals perform and that the primary purpose of these meetings is to discuss compliance issues and keep registered persons current on changing compliance requirements or changes in the firm. Accordingly, NASD proposes to amend NASD Rule 3010(a)(7) to require that all registered principals, in addition to registered representatives, attend an annual compliance meeting in accordance with the Rule.

Further, according to the NASD, although registered principals are considered associated persons and thus are included in the scope of NASD Rule 3010(a), registered principals are not specifically listed in NASD Rule 3010(a). Therefore, NASD proposes a technical amendment to NASD Rule 3010(a) to clarify that each member is required to establish and maintain a system to supervise the activities of each registered representative, registered principal, as well as other associated persons.

NASD represents that the proposal clarifies that this provision applies to registered representatives and registered principals, who are considered to be associated persons, as well as all other associated persons. To be consistent with this proposed amendment to NASD Rule 3010(a), NASD is proposing similar changes to NASD Rules 3010(a)(3) and 3010(b)(1) to clarify that the scope of these rules extends to registered representatives and registered

principals, as well as other associated persons.<sup>5</sup> NASD is also proposing to replace a reference to “Association” with “NASD” in the text of NASD Rule 3010(b)(1) to reflect the fact that NASD no longer refers to itself using its full corporate name, “Association,” or “the NASD.”

NASD will announce the effective date of the proposed rule change in an NtM to be published no later than 60 days following Commission approval. The effective date will be 30 days following publication of the NtM announcing Commission approval.

## 2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,<sup>6</sup> in general and with Section 15A(b)(6) of the Act,<sup>7</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. NASD believes that the proposed rule change to NASD Rule 3010(a)(7) will increase the level of interaction between registered representatives and principals with respect to compliance issues and will assist firms in ensuring that all their registered persons remain current on changing compliance requirements and changes in the firms. NASD believes that the technical amendments to NASD Rules 3010(a), 3010(a)(3), and 3010(b)(1) will further clarify members’ obligations with respect to their registered representatives and registered principals, as well as other associated persons.

### 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

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<sup>5</sup> See Amendment No. 1, supra note 3.

<sup>6</sup> 15 U.S.C. 78o-3.

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

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 NASD consents, the Commission will:

A. by order approve such proposed rule change; or

B. institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2005-004 on the subject line.

Paper comments:

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<sup>7</sup> 15 U.S.C. 78q-3(b)(6).

- 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-2005-004. 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-2005-004 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.<sup>8</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>8</sup> 17 CFR 200.30-3(a)(12).