

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53276; File No. SR-NASD-2005-098)

February 13, 2006

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Submission of SEC Rule 15c2-11 Information on Non-Nasdaq Securities

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 August 18, 2005, the National Association of Securities Dealers, Inc. (“NASD”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) proposed rule change SR-NASD-2005-098 as described in Items I, II, and III below, which Items have been prepared by NASD. On January 10, 2006, NASD filed Amendment No. 1 to the proposed rule change.³ 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 is proposing to amend NASD Rule 6740 to (1) relieve members of the obligation to file with NASD copies of certain information that is electronically accessible through the SEC’s Electronic Data Gathering, Analysis, and Retrieval (“EDGAR”) system; and (2) exclude from NASD Rule 6740 quotation activity for which the SEC has granted an exemption under SEC Rule 15c2-11(h). Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 made certain technical and clarifying changes to the original rule filing of August 18, 2005. Amendment No. 1 supersedes and replaces the original rule filing in its entirety.

[brackets].

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6740. Submission of Rule 15c2-11 Information on Non-Nasdaq Securities

(a) Except as provided in SEC Rule 15c2-11(f)(1), (2), (3), and (5) and 15c2-11(h) under the Act, no member shall initiate or resume the quotation of a non-Nasdaq security in any quotation medium unless the member has demonstrated compliance with this rule and the applicable requirements for information maintenance under Rule 15c2-11. A member shall demonstrate compliance by making a filing with, and in the form required by, [the Association] NASD, which filing must be received at least three business days before the member's quotation is published or displayed in the quotation medium.

(b) The information to be filed shall contain one copy of all information required to be maintained under SEC Rule 15c2-11(a)(1), (2), (3)(iii), (4)(ii), or (5), including any information that may be required by future amendments thereto. Members are not required to file with NASD copies of any information that is available through the SEC's Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system; provided, however, that the filing with NASD shall contain identifying information for each issuer report or statement available through EDGAR that was relied upon in satisfying the member's obligations under this Rule and SEC Rule 15c2-11(a), including the type of report, report date and any other information as may be requested by NASD. In addition, this filing shall identify the issuer, the issuer's predecessor in the event of a merger or reorganization within the previous 12 months, the type of non-Nasdaq security to be

quoted (e.g., ADR, warrant, unit, or common stock), the quotation medium to be used, the member's initial or resumed quotation, and the particular subsection of Rule 15c2-11 with which the member is demonstrating compliance. Additionally, if a member is initiating or resuming quotation of a non-Nasdaq security with a priced entry, the member's filing must specify the basis upon which that priced entry was determined and the factors considered in making that determination.

(c) If a member's initial or resumed quotation does not include a priced entry, a member shall supplement its prior filing under this Rule, in the form required by [the Association] NASD, before inserting a priced entry for the affected non-Nasdaq security in a quotation medium. The supplemental filing shall specify the basis upon which the proposed priced entry was determined and the factors considered in making that determination. The supplemental filing must be received by [the Association] NASD at least three business days before the member's priced entry first appears in a quotation medium.

(d) All filings made with [the Association] NASD under this Rule must be reviewed and signed by a principal of the member firm.

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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 6740 prohibits a member from initiating or resuming the quotation of a non-Nasdaq security⁴ in a quotation medium unless the member has demonstrated compliance with the requirements of SEC Rule 15c2-11 pertaining to the review and maintenance of specified information about the security and issuer. To demonstrate compliance with both NASD Rule 6740 and SEC Rule 15c2-11, a member must file with NASD a Form 211, together with the information required under SEC Rule 15c2-11(a), at least three business days before the quotation is published or displayed.

Much of the information that is required under SEC Rule 15c2-11(a) for reporting issuers, such as prospectuses, offering circulars and annual reports, is publicly available through the SEC's EDGAR system. NASD believes that there is no policy purpose served in requiring members to file with NASD copies of such information.

Accordingly, NASD is proposing to relieve members of the obligation to file with NASD copies of information that is electronically accessible through the SEC's EDGAR system. NASD believes the proposed rule change, as amended, will eliminate the administrative burden and cost imposed on members in furnishing such information to NASD.

Although members will not be required to file the information with NASD, they will nonetheless remain obligated under NASD Rule 6740 to review and maintain information

⁴ For purposes of this rule, "non-Nasdaq security" is defined in NASD Rule 6710(c) as "any equity security that is neither included in The Nasdaq Stock Market nor traded on any national securities exchange."

as required by SEC Rule 15c2-11.

In addition, members currently are required to identify on the Form 211 the type and date of each report or statement that is submitted to NASD. Under the proposed rule change, as amended, where copies of documents are not submitted to NASD because they are available through EDGAR, members will continue to be required to provide on the Form 211 the type and date of each report or statement, as well as other information as may be requested by NASD relating to each report or statement for the reporting issuer that the member relied upon in satisfying its information review obligations under NASD Rule 6740 and SEC Rule 15c2-11(a).⁵

In addition, paragraphs (f) and (h) of SEC Rule 15c2-11 set forth the exclusions to the rule's information review and maintenance requirements. NASD Rule 6740(a) tracks the SEC Rule 15c2-11(f) exceptions,⁶ but does not contain an exclusion for those quotations pursuant to which the Commission has granted an exemption, upon request or its own motion, under SEC Rule 15c2-11(h). NASD believes that the terms for filing a Form 211 under NASD Rule 6740 should conform to SEC Rule 15c2-11; members should not be required to review, maintain and file information under the NASD rule if there is no similar obligation under the SEC rule. Accordingly, NASD is proposing to amend NASD Rule 6740 to relieve members of their obligations under the rule in the event that the Commission has granted an exemption to any quotation under SEC Rule

⁵ If information other than the type and date of the statement or report is required to be submitted by members under this proposed provision, NASD will provide notice of these additional requirements in a Notice to Members.

⁶ Because the definition of "non-Nasdaq security" under NASD Rule 6710(c) excludes debt instruments, NASD Rule 6740 does not refer to subsection (f)(4) of SEC Rule 15c2-11, which relates to municipal securities.

15c2-11(h). To the extent that the Commission’s exemptive relief applies any terms and conditions to such relief, those same terms and conditions would apply to the exclusion under NASD Rule 6740.

Finally, NASD no longer refers to itself using its full corporate name, “the Association,” or “the NASD.” Instead, NASD uses the name “NASD” unless otherwise appropriate for corporate or regulatory reasons. Accordingly, the proposed rule change, as amended, replaces, as a technical change, several references in NASD Rule 6740 to “the Association” with the name “NASD.”

NASD will announce the effective date of the proposed rule change, as amended, in a Notice to Members to be published no later than 60 days following Commission approval. The effective date will be 30 days following publication of the Notice to Members announcing Commission approval.

2. Statutory Basis

NASD believes that the proposed rule change, as amended, is consistent with the provisions of Section 15A(b)(6) of the Act, 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 harmonizing NASD Rule 6740 and SEC Rule 15c2-11, so that members are not required to review, maintain and file information under the NASD rule when they are not required to review and maintain such information under the SEC rule, is consistent with the Act. Moreover, SEC Rule 15c2-11 is, by its terms, “a means reasonably designed to prevent fraudulent, deceptive or manipulative acts or

practices,” and thus, NASD believes that harmonizing NASD Rule 6740 and SEC Rule 15c2-11 is consistent with the protection of investors and the public interest.

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

NASD does not believe that the proposed rule change, as amended, 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. 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 self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, as amended, 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 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-2005-098 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-2005-098. 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-2005-098 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.⁷

Nancy M. Morris
Secretary

⁷ 17 CFR 200.30-3(a)(12).