

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53556; File No. SR-NASD-2005-098)

March 27, 2006

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

On August 18, 2005, the National Association of Securities Dealers, Inc. (“NASD”) filed with the Securities and Exchange Commission (“SEC” or “Commission”), a proposed rule change to NASD Rule 6740 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” or “Exchange Act”)¹ and Rule 19b-4 thereunder.² On January 10, 2006, NASD submitted Amendment No. 1 to the proposed rule change.³ The Commission published the proposed rule change, as amended, for comment in the Federal Register on February 21, 2006.⁴ The Commission received no comments on the proposal.

NASD Rule 6740 prohibits a member from initiating or resuming the quotation of a non-Nasdaq security⁵ 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

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³ Amendment No. 1 made certain technical and clarifying changes to the original rule filing of August 18, 2005 and superseded and replaced the original rule filing in its entirety.

⁴ See Securities Exchange Act Release No. 53276 (February 13, 2006), 71 FR 8875 (February 21, 2006).

⁵ 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.”

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.

The proposed rule change, as amended, relieves members of the obligation to file with NASD copies of information that is electronically accessible through the SEC's EDGAR system. 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 as required by SEC Rule 15c2-11. Further, 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).⁶

In addition, the proposed rule change, as amended, would except members from the requirements of NASD Rule 6740 where the Commission has granted an exemption to publish or submit any quotation under SEC Rule 15c2-11(h). To the extent that the Commission's exemption is subject to any terms and conditions, those same terms and conditions would apply to the exclusion under NASD Rule 6740.

Finally, the proposed rule change, as amended, replaces, as a technical change, several references in NASD Rule 6740 to "the Association" with the name "NASD."

⁶ 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.

NASD has stated that the effective date of the proposed rule change will be 30 days following publication of NASD's Notice to Members announcing Commission approval, and the Commission believes that this is reasonable.⁷

The Commission believes that the proposed rule change, as amended, should harmonize 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. NASD Rule 6740 seeks to ensure that members are in compliance with SEC Rule 15c2-11. Therefore, where the Commission has granted an exemption under Rule 15c2-11(h), it is appropriate that the same treatment apply under NASD Rule 6740. The Commission also believes that relieving members of the obligation to file with NASD copies of information that is electronically accessible through the EDGAR system will eliminate the administrative burden and cost imposed on members in furnishing such information to NASD while preserving the requirement that the members maintain and review information as required by SEC Rule 15c2-11.

For the above reasons, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities association⁸ and, in particular, the requirements of Section 15A of the Act⁹ and the rules and regulations thereunder.

⁷ NASD will announce the effective date of the proposed rule change in a Notice to Members to be published no later than 60 days following Commission approval.

⁸ In approving the proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁹ 15 U.S.C. 78q-3.

The Commission finds specifically that the proposed rule change is consistent with Sections 15A(b)(6) and 15A(b)(9) of the Exchange Act.¹⁰

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Exchange Act,¹¹ that the proposed rule change (SR-NASD 2005-098), as amended, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Nancy M. Morris
Secretary

¹⁰ 15 U.S.C. 78q-3(b)(6) and (b)(9).

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 200.30-3(a)(12).