

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-54566; File No. SR-NASD-2006-066)

October 3, 2006

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change to Allow Certain Institutional Customers to Elect Not to Receive Account Statements

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 May 23, 2006, 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 August 17, 2006, NASD filed Amendment No. 1 to the proposed rule change.<sup>3</sup> 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 amend NASD Rule 2340 to relieve members from the requirement to send quarterly account statements to customer accounts that are carried solely for the purpose of execution on a delivery versus payment and receive versus payment (“DVP/RVP”) basis, provided certain conditions are met.<sup>4</sup> Below is the text of

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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, NASD proposed additional changes to the text of proposed amended Rule 2340, which are incorporated in the proposed rule text below.

<sup>4</sup> The proposed rule change is similar to a rule change proposed by the New York Stock Exchange, Inc. (now known as New York Stock Exchange LLC). See

the proposed rule change.<sup>5</sup> Proposed new language is underlined; proposed deletions are in [brackets].<sup>6</sup>

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## **2300. TRANSACTIONS WITH CUSTOMERS**

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### **2340. Customer Account Statements**

#### **(a) General**

(1) Except as otherwise provided by paragraph (b), [E]each general securities member shall, with a frequency of not less than once every calendar quarter, send a statement of account (“account statement”) containing a description of any securities positions, money balances, or account activity to each customer whose account had a security position, money balance, or account activity during the period since the last such statement was sent to the customer.

(2) No change in text.

#### **(b) Delivery Versus Payment/Receive Versus Payment (DVP/RVP) Accounts**

Quarterly account statements need not be sent to a customer pursuant to paragraph

(a) of this Rule if:

(1) the customer’s account is carried solely for the purpose of execution

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Securities Exchange Act Release No. 53826 (May 18, 2006), 71 FR 30211 (May 25, 2006).

<sup>5</sup> The text includes minor technical changes to proposed paragraph (b)(4) pursuant to a telephone conversation between Shirley Weiss, Associate General Counsel, NASD, and Brice Prince, Special Counsel, Division of Market Regulation, Commission, on October 3, 2006.

<sup>6</sup> The changes to Rule 2340 proposed in this rule filing are marked to the current version of the rule text as recently amended in SR-NASD-2004-171. See Securities Exchange Act Release No. 54411 (Sept. 7, 2006), 71 FR 54105 (Sept. 13, 2006).

on a DVP/RVP basis;

(2) all transactions effected for the account are done on a DVP/RVP basis in conformity with Rule 11860;

(3) the account does not show security or money positions at the end of the quarter (provided, however that positions of a temporary nature, such as those arising from fails to receive or deliver, errors, questioned trades, dividend or bond interest entries and other similar transactions, shall not be deemed security or money positions for the purpose of this paragraph (b));

(4) the customer consents to the suspension of such statements in writing, and the member maintains such consents in a manner consistent with Rule 3110 and SEC Rule 17a-4;

(5) the member undertakes to provide any particular statement or statements to the customer promptly upon request; and

(6) the member undertakes to promptly reinstate the delivery of such statements to the customer upon request.

Nothing in this Rule shall be seen to qualify or condition the obligations of a member under SEC Rule 15c3-2 concerning quarterly notices of free credit balances on statements.

[(b)] **(c)** No change in text.

[(c)] **(d) Definitions**

For purposes of this Rule, the following terms will have the stated meanings:

(1) – (5) No change in text.

(6) a “DVP/RVP account” is an arrangement whereby payment for securities purchased is made to the selling customer’s agent and/or delivery of securities sold is made to the buying customer’s agent in exchange for payment at time of settlement, usually in the form of cash.

[(d)] **(e) Exemptions**

Pursuant to this Rule 9600 Series, [the Association] NASD may exempt any member from the provisions of this Rule for good cause shown.

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

In filing the proposed rule change and Amendment No. 1 with the Commission, NASD included statements concerning the purpose of, and basis for, the proposed rule change, as amended. 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 2340 requires any member that conducts a general securities business and also carries customer accounts or holds customer funds or securities, at least once each calendar quarter, to send a statement of account containing a description of any securities positions, money balances, or account activity to each customer whose account had a security position, money balance, or account activity during the time since the last statement was sent.

In a DVP/RVP arrangement, payment for securities purchased is made to the

selling customer's agent and/or delivery of securities sold is made to the buying customer's agent in exchange for payment at time of settlement, usually in the form of cash. Because transactions in DVP/RVP accounts (chiefly institutional accounts) are settled directly with the agent on a transaction-by-transaction basis, account statements sent by general securities firms to customers with DVP/RVP accounts generally do not reflect any cash balance or security position at the end of a quarter. Rather than using the information provided in quarterly statements, DVP/RVP customers generally rely on trade runs or customer confirmations issued pursuant to Rule 10b-10 under the Act for transaction-related information.

The proposed rule change to Rule 2340 would relieve members from the obligation to send quarterly statements to customers with DVP/RVP accounts if: (1) the customer's account is carried solely for the purpose of execution on a DVP/RVP basis; (2) all transactions in the account are handled on a DVP/RVP basis in conformity with Rule 11860;<sup>7</sup> (3) there are no securities or cash positions in the account at the end of the quarter (other than positions of a temporary nature, such as those arising from fails to receive or deliver, errors, questioned trades, dividend or bond interest entries and other similar transactions); (4) the customer consents to the suspension in writing; (5) the member undertakes to provide any particular statement or statements to the customer promptly upon request; and (6) the member undertakes to promptly reinstate the delivery of such statements to the customer upon request. The proposed rule change specifies that Rule 2340 does not qualify or condition the obligations of a member under SEC Rule

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<sup>7</sup> Prior to accepting an order in a DVP/RVP account, a member must comply with Rule 11860, which requires, among other things, that the member obtain certain information from the customer, including the name and address of the agent and the account number of the customer on file with the agent.

15c3-2 concerning quarterly notices of free credit balances on statements. The proposed rule change would also define “DVP/RVP account” for purposes of Rule 2340.<sup>8</sup>

By requiring the customer’s affirmative consent, the customer’s ability to receive quarterly statements is preserved, and the member is precluded from unilaterally terminating delivery of customer statements. In addition, customers would be able to promptly receive particular account statements upon request, and promptly reinstate the delivery of account statements upon request.

The proposed rule change also includes a technical amendment that would replace the reference to “the Association” in paragraph (e) of Rule 2340 with “NASD,” because NASD no longer refers to itself using its full corporate name, “the Association,” or “the NASD.” Instead, NASD uses “NASD” unless otherwise appropriate for corporate or regulatory reasons.

## 2. Statutory Basis

NASD believes that the proposed rule change 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 promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change is designed to facilitate transactions in securities and to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with

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<sup>8</sup> Proposed Rule 2340(d)(6) would define a “DVP/RVP account” as “an arrangement whereby payment for securities purchased is made to the selling customer’s agent and/or delivery of securities sold is made to the buying customer’s agent in exchange for payment at time of settlement, usually in the form of cash.”

respect to transactions in securities by giving members a mechanism to allow certain customers that utilize alternative sources of information to keep track of their trading to opt out of receiving unwanted account statements. NASD also believes that the conditions of the proposed amended rule are designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest by requiring that consents to the suspension of account statements under the amended rule be in writing, and by requiring members to undertake to promptly provide any particular account statement upon request and to promptly reinstate delivery of account statements upon request.

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 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

NASD neither solicited nor received written comments on the proposed rule change.

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, or
- (b) institute proceedings to determine whether the proposed rule change should be disapproved.

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. The effective date of the proposed rule change will be 30 days following publication of the Notice to Members announcing Commission approval.

#### 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-2006-066 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-2006-066. 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, 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 File Number SR-NASD-2006-066 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>9</sup>

Nancy M. Morris  
Secretary

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<sup>9</sup> 17 CFR 200.30-3(a)(12).