

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-54456; File No. SR-NASD-2006-064)

September 15, 2006

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Extension of Time Requests

I. Introduction

On May 15, 2006, the National Association of Securities Dealers, Inc. (“NASD”) filed with the Securities and Exchange Commission (“SEC” or “Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, a proposed rule change seeking to adopt new Rule 3160 (“Extensions of Time under Regulation T and SEC Rule 15c3-3”). NASD filed Amendment Nos. 1 and 2 to the proposed rule change on May 25, 2006 and July, 25, 2006, respectively.<sup>3</sup> The proposed rule change, as amended, was published in the Federal Register on August 10, 2006.<sup>4</sup> The Commission received one comment letter in response to the proposal.<sup>5</sup> On September 13, 2006, the NASD filed a response to the comment

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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> See Amendment No. 1 and Amendment No. 2. Amendment No. 2 replaced and superceded the original rule filing and Amendment No. 1 in their entirety.

<sup>4</sup> Exchange Act Release No. 54265 (August 2, 2006), 71 FR 45879 (August 10, 2006).

<sup>5</sup> See letter from Dennis A. Young, Vice President, Treasurer, Cosse International Securities, Inc., to Nancy Morris, Secretary, Commission, dated August 31, 2006.

letter.<sup>6</sup> This order approves the proposed rule change, as amended.

## II. Description

NASD is proposing to adopt new Rule 3160 to require (1) all clearing firm members for which NASD is the designated examining authority (“DEA”) pursuant to Rule 17d-1 under the Act to submit to NASD requests for extensions of time under Regulation T<sup>7</sup> promulgated by the Federal Reserve Board, or pursuant to Rule 15c3-3(n) under the Act; and (2) each clearing firm member for which NASD is the DEA to file a monthly report with NASD indicating all broker-dealers for which it clears that have overall ratios of requested extensions of time to total transactions for the month that exceed a percentage specified by NASD.

### Extension of Time Requests

As stated above, proposed NASD Rule 3160(a) would require all clearing firm members for which NASD is DEA to submit to NASD requests for extensions of time under Regulation T and Exchange Act Rule 15c3-3(n). The Commission previously approved NYSE Rule 434 requiring each carrying firm for which the NYSE is the DEA to submit extensions requests to the NYSE.<sup>8</sup> The SRO designated as a member’s DEA has responsibility for examining its members that are also members of another SRO for

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<sup>6</sup> See letter from Kathryn M. Moore, Assistant General Counsel, Regulatory Policy and Oversight, to Nancy M. Morris, Secretary, Commission, dated September 13, 2006.

<sup>7</sup> See 12 CFR 220.1, et. seq.

<sup>8</sup> See Exchange Act Release No. 34073 (May 17, 1994), 59 FR 26826 (May 24, 1994) (SR-NYSE-88-35); see also NYSE Information Memo 94-22 (June 10, 1994).

compliance with applicable financial responsibility rules such as Regulation T and Exchange Act Rule 15c3-3. NASD believes that requiring a member to submit extension requests to its DEA helps to ensure that the DEA receives complete extension information to assist it in performing this function, and would ensure uniform application of standards to all customers of firms for which NASD is the DEA.

#### Monthly Reporting Requirement

Proposed NASD Rule 3160(b) would require each clearing firm member for which NASD is the DEA to file a monthly report with NASD, in such format as NASD may require, indicating all broker-dealers for which it clears that have overall ratios of requests for extensions of time under Regulation T and Rule 15c3-3(m) to total transactions for the month that exceed a percentage specified by NASD. The monthly report would require clearing firms subject to proposed NASD Rule 3160(b) to identify, among other things: (1) the broker-dealer's name; (2) the number of transactions by the broker-dealer for the month; (3) the number of extension requests for the month; and (4) the ratio of the number of extensions requested to total transactions. The rule proposal would require that the reports be submitted no later than five business days following the end of each reporting month. The requirements of the proposed NASD monthly reporting requirement are consistent with the NYSE's current program.<sup>9</sup>

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<sup>9</sup> See Exchange Act Release No. 28726 (December 28, 1990), 56 FR 540 (January 7, 1991) (SR-NYSE-89-24); and NYSE Information Memoranda 98-09 (March 5, 1998) and 94-22 (June 10, 1994); see also NYSE Information Memorandum 05-78 (October 12, 2005).

### III. Summary of Comment Received and NASD Response

The Commission received a one comment letter to the proposed rule change.<sup>10</sup> The commenter stated that the proposed monthly reporting requirement would place an undue burden on self-clearing firms and requested that NASD amend the proposed rule to clarify that the monthly reporting requirement applies solely clearing firms which clear for other broker-dealers. In its response, NASD stated that it did not intend for the proposed monthly reporting requirement to apply to self-clearing firms that do not clear for other broker-dealers, and that the proposed rule would not require these self-clearing firms to file the monthly report.<sup>11</sup> Finally, NASD stated that it will reiterate this position in the Notice to Members announcing Commission approval of the proposed rule.

### IV. Discussion and Commission Findings

The Commission has reviewed the proposed rule filing, as amended, and finds that the proposed rule change, as amended, is consistent with the requirements of the Exchange Act, and, in particular, Section 15A(b)(6) of the Act,<sup>12</sup> which requires, among other things, that NASD's 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. The Commission believes that the proposed rule change will further assist NASD in ensuring that firms are complying with

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<sup>10</sup> See supra note 5.

<sup>11</sup> See supra note 6.

<sup>12</sup> 15 U.S.C. 78o-3(b)(6). In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

financial responsibility rules and preventing the excessive use of credit for the purchase or carrying of securities.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,<sup>13</sup> that the proposed rule change (File No. SR-NASD-2006-064), as amended, be, and it hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

Nancy M. Morris  
Secretary

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<sup>13</sup> 15 U.S.C. 78s(b)(2).

<sup>14</sup> 17 CFR 200.30-3(a)(12).