

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-54654; File No. SR-NASD-2006-060)

October 26, 2006

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change to Require Members to File Regulatory Notices with NASD Electronically

On May 16, 2006, the National Association of Securities Dealers, Inc. (“NASD”) filed a proposed rule change with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)¹ and Rule 19b-4 under the Act.² The proposed rule change adopts NASD Rule 3170 to provide the NASD with the authority to require member firms to file or submit electronically with the NASD any regulatory notice or other document that member firms are required to file with (or otherwise submit to) the NASD. The NASD may specify the electronic format to be used. The proposed rule change does not specify the particular regulatory notices or documents that the NASD will require members to file electronically. Instead, the NASD’s proposed rule change would give the NASD the authority to require members to file or submit electronically with the NASD any specified regulatory notice or document.

The NASD plans to require members to file certain specified notices with the NASD via an electronic, Internet-based receiving and processing system (“System”), using templates developed by the NASD for each notice. The System will be available to members on the NASD’s Internet Web site. Initially, the NASD plans to require

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

members to file notices that must be filed with the NASD under the following Exchange Act Rules electronically:³

- Rule 15c3-1(e) – Withdrawals of equity capital
- Rule 15c3-3(i) – Special Reserve Bank Account
- Rule 17a-4(f)(2)(i); Rule 17a-4(f)(3)(vii) – Electronic storage media
- Rule 17a-5(f)(4) – Replacement of accountant
- Rule 17a-11(b) – Net capital deficiency
- Rule 17a-11(c)(1) – Aggregate indebtedness is in excess of 1200 percent of net capital
- Rule 17a-11(c)(2) – Net capital is less than 5 percent of aggregate debit items
- Rule 17a-11(c)(3) – Net capital is less than 120 percent of required minimum dollar amount
- Rule 17a-11(d) – Failure to make and keep current books and records
- Rule 17a-11(e) – Material inadequacy in accounting systems, internal controls, or practices and procedures

³ The NASD has requested relief on behalf of its members from the Commission with respect to these Exchange Act rules. See Letter from Patrice Gliniecki, Senior Vice President and General Counsel, NASD, to Michael A. Macchiaroli, Associate Director, Division of Market Regulation, Commission, dated May 16, 2006. The staff of the Division of Market Regulation is issuing a no-action letter providing such relief. See letter from Michael A. Macchiaroli, Associate Director, Division of Market Regulation, Commission, to Patrice Gliniecki, Senior Vice President and General Counsel, NASD, dated October 26, 2006. Electronic filing of notices with the NASD does not affect requirements in these rules to file notices with the Commission or other securities regulatory agencies.

The proposed rule change was published for comment in the Federal Register on August 22, 2006.⁴ A correction was published on September 22, 2006.⁵ This order approves the proposed rule change.

The Commission received two comment letters in response to the proposed rule change.⁶ Mr. Akridge supported the proposal. Wulff, Hansen supported the general purpose of the rule change, but stated that converting documents that exist only in paper form to electronic format could be burdensome for firms that do not have the necessary technology. On October 5, 2006, the NASD filed a response to the comment letters.⁷ In its response, the NASD stated that it intends to accommodate firms that do not have the ability to convert documents to electronic format. Further, the NASD stated that when technologies change, the NASD will consider the economic effect of the new technologies and consult with its members regarding requiring filings that use the new technologies.

The Commission finds that the NASD's proposal to adopt NASD Rule 3170 is consistent with the requirements of the Act and the rules and regulations under the Act

⁴ See Securities Exchange Act Release No. 54319 (August 15, 2006), 71 FR 48958 (SR-NASD-2006-060).

⁵ See Securities Exchange Act Release No. 54319A (September 18, 2006), 71 FR 55537 (SR-NASD-2006-060).

⁶ See e-mail dated August 31, 2006 from Frank Akridge Jr. ("Mr. Akridge") and letter dated September 7, 2006 from Chris Charles, President, Wulff, Hansen & Co. ("Wulff, Hansen").

⁷ See letter from Shirley H. Weiss, Office of General Counsel, NASD, to Katherine A. England, Division of Market Regulation, Commission.

applicable to a national securities exchange.⁸ In particular, the Commission believes that the proposal is consistent with Section 15A(b)(6) of the Act,⁹ 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 in that the proposed rule change will establish a cost-saving and efficient method of filing these notices that will enhance the speed and efficiency of processing the notices and reduce administrative costs.

The NASD will issue a Notice to Members and other member communications, as appropriate, to advise its members which regulatory notices or documents members will be required to file or submit electronically to the NASD and the date on which electronic filing or submission of these notices or documents will be required. These communications will also advise members that as of the specified date, electronic filing or submission of the specified regulatory notices or documents will be mandatory, and that the NASD will no longer accept facsimile or other non-electronic transmissions of these notices or documents.

⁸ In approving this proposed rule change, the Commission 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. 78o-3(b)(6).

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-NASD-2006-060) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Nancy M. Morris
Secretary

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).