

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-54811; File No. SR-NASD-2006-066)

November 22, 2006

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto to Allow Certain Institutional Customers to Elect Not to Receive Account Statements

On May 23, 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 (“Exchange Act”)¹ and Rule 19b-4 thereunder,² a proposed amendment to NASD Rule 2340 (Customer Account Statements). On August 17, 2006, NASD filed Amendment No. 1 to the proposed rule change.³ The proposed rule change, as amended by Amendment No. 1, was published for comment in the Federal Register on October 16, 2006.⁴ The Commission received one comment on the proposal.⁵ This order approves the proposed rule change, as amended.

I. Description

The proposed amendment to NASD Rule 2340 would allow institutional customers with Delivery versus Payment/Receive versus Payment (“DVP/RVP”)

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, NASD proposed to partially amend the text of proposed amended Rule 2340.

⁴ See Exchange Act Release No. 54566 (Oct. 3, 2006), 71 FR 60784 (Oct. 16, 2006).

⁵ See letter from Noland Cheng, Chairman, Operations Committee, Securities Industry and Financial Markets Association (“SIFMA”), to Nancy M. Morris, Secretary, Commission, dated November 3, 2006 (“SIFMA letter”) (available for review on the Commission’s website at <http://www.sec.gov/comments/sr-nasd-2006-066/nasd2006066-1.pdf>).

accounts to elect not to receive quarterly account statements.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 the time of settlement, usually in the form of cash.

Rule 2340, in pertinent part, requires any member that conducts a general securities business and also carries customer accounts or holds customer funds or securities to send account statements to customers at least once each calendar quarter. The statement of account must contain a description of any securities positions, money balances, or account activity, and must be sent to each customer whose account had a security position, money balance, or account activity during the time since the last statement was sent.

The proposed amendment would provide relief from this requirement with regard to customer accounts that are carried solely for the purpose of DVP/RVP transactions. NASD states that account statements for DVP/RVP accounts (chiefly institutional accounts) generally do not reflect any cash balance or security position at the end of a quarter, and that DVP/RVP customers generally rely on trade runs or customer confirmations issued pursuant to Rule 10b-10 under the Exchange Act for transaction-related information.

The proposed amendment 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

⁶ 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 Securities Exchange Act Release No. 53826 (May 18, 2006), 71 FR 30211 (May 25, 2006).

the account are handled on a DVP/RVP basis in conformity with Rule 11860;⁷ (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 and the member maintains such consents in a manner consistent with NASD Rule 3110 and Rule 17a-4 under the Exchange Act;⁸ (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 Rule 15c3-2 under the Exchange Act concerning quarterly notices of free credit balances on statements.⁹ The proposed rule change would also

⁷ 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.

⁸ Under NASD Rule 3110(a), NASD members are, among other things, required to make and preserve books and records as prescribed by Rule 17a-3 under the Exchange Act. Rule 3110(a) also states that the record keeping format, medium, and retention period must comply with Rule 17a-4 under the Exchange Act. Rule 17a-4 specifies the manner in which broker-dealers must maintain the records created in accordance with Rule 17a-3, and certain other records produced by broker-dealers, and the required retention periods for these records.

⁹ Rule 15c3-2 under the Exchange Act requires broker-dealers to provide each of their customers for whom a free credit balance is carried, not less frequently than once every three months, a written statement informing the customer of the amount due to the customer, and written notice that the funds are not segregated and may be used in the broker-dealer's business operations, and that the funds are payable on the customer's demand.

define “DVP/RVP account” for purposes of Rule 2340.¹⁰ Finally, the proposed rule change includes a technical amendment that would replace the reference to “the Association” in paragraph (e) of Rule 2340 with “NASD.”

II. Summary of Comments

The Commission received one comment on the proposal, which was supportive, did not suggest any changes to the proposal, and did not require a response from NASD.¹¹

III. Discussion and Findings

The Commission finds that the proposed rule change is consistent with the Act, and in particular, with Section 15A(b)(6) of the Act,¹² which requires, among other things, that NASD rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and national market system, and in general, to protect investors and the public interest. The Commission believes that the proposed rule change, as amended, should remove impediments to and perfect the mechanisms of a free and open market and national market system by removing an unnecessary and potentially costly obligation on firms to deliver quarterly account statements to DVP/RVP customers. At the same time, the proposal maintains certain investor protections (i.e., requiring NASD members to obtain affirmative consent to the suspension of quarterly account statements, preserving the

¹⁰ 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.”

¹¹ See SIFMA letter, footnote 5, supra.

¹² 15 U.S.C. 78o-3(b)(6).

ability of customers to obtain particular statements upon request and to resume receipt of statements promptly upon request, and precluding member organizations from unilaterally terminating delivery of such statements). The Commission therefore believes the proposal is consistent with the Exchange Act.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act¹³ that the proposed rule change (SR-NASD-2006-066) be, and hereby is, approved,¹⁴ effective immediately.¹⁵

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Nancy M. Morris
Secretary

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ In approving this proposed rule change, the Commission notes that it has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁵ NASD initially requested that the effective date of the proposed rule change be 30 days following NASD's publication, within 60 days of the Commission's approval of the rule change, of a Notice to Members announcing the rule change. NASD withdrew its request to delay effectiveness of the proposal in a telephone conversation between Shirley Weiss, Associate General Counsel, NASD, and Brice Prince, Special Counsel, Division of Market Regulation, Commission, on November 21, 2006.

¹⁶ 17 CFR 200.30-3(a)(12).