

NASD Notice to Members 99-26

NASD Will Terminate
Form 211 Applications If
Applicants Do Not
Respond To NASD
Deficiency Letters Within
180 Calendar Days

Suggested Routing

- ☒ Senior Management
- ☐ Advertising
- ☒ Continuing Education
- ☐ Corporate Finance
- ☐ Executive Representatives
- ☐ Government Securities
- ☐ Institutional
- ☐ Insurance
- ☐ Internal Audit
- ☒ Legal & Compliance
- ☐ Municipal
- ☐ Mutual Fund
- ☒ Operations
- ☐ Options
- ☐ Registered Representatives
- ☐ Registration
- ☐ Research
- ☐ Syndicate
- ☐ Systems
- ☒ Trading
- ☒ Training
- ☐ Variable Contracts

Executive Summary

The purpose of this *Notice to Members* is to advise member firms that Form 211 applications, submitted by member firms to demonstrate compliance with Securities and Exchange Commission (SEC) Rule 15c2-11 and National Association of Securities Dealers, Inc. (NASD® or Association) Rule 6740, will be treated as abandoned and the Association will close its files on the matter if a submitting member firm has not responded to a deficiency letter sent to it by the Market Regulation Department staff within 180 calendar days of the date of the deficiency letters.¹

Questions concerning this *Notice* may be directed to Ken Worm, Assistant Director, Market Regulation Department, NASD Regulation, Inc. (NASD RegulationSM) at (301) 208-2862.

Background

Pursuant to Rule 6740, prior to initiating or resuming quotation of a non-Nasdaq® security in any quotation medium, a member firm must submit a Form 211 application to the Market Regulation Department for its review and a determination that the member firm has demonstrated compliance with SEC Rule 15c2-11. Within three days of the receipt of the Form 211 application, the staff will either clear the application, allowing the member firm to initiate or resume quotations of the non-Nasdaq security in the specified quotation medium, or send the member firm a deficiency letter explaining that it cannot clear the application because of certain specified deficiencies and setting forth what the firm must do to address those specified concerns.

While a member firm is provided an opportunity to cure any deficiencies in

the Form 211 application by providing additional explanation and/or information that addresses those concerns, member firms frequently fail to respond to the letter in any manner. As a result of a member firm's failure to respond, the information relied upon by the member firm in making its application becomes stale and it is no longer possible to approve the application under Rule 6740.

In order to address the lack of current information in these circumstances, as of the date of the publication of this *Notice to Members*, any Form 211 application for which the member firm has not addressed a deficiency letter within 180 calendar days of the date of that letter will be treated as withdrawn and the applicant's file will be closed.² If the member firm still desires to initiate or resume quotations of the subject non-Nasdaq security after the file is closed, it must file a new Form 211 application along with current issuer information.

Endnotes

¹Six months is the longest period of time that an application can remain current without being supplemented with more timely documents. See SEC Rule 15c2-11(g).

²All Form 211 applications currently maintained in the staff's files for which member firms have failed to respond to deficiency letters for 180 calendar days or longer will be closed. All Form 211 applications currently maintained in the staff's files for which this 180-calendar day period has not yet run and all Form 211 applications received subsequent to the publication of this *Notice to Members* will be processed according to this procedure.

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