

Notice to Members

MAY 2006

SUGGESTED ROUTING

Internal Audit
Legal & Compliance
Operations
Registered Representatives
Senior Management
Trading

KEY TOPICS

Form 211
Rule 6740
SEC Rule 15c2-11

GUIDANCE

Amendments to Rule 6740

SEC Approves Amendments to Rule 6740 Relating to Submission of SEC Rule 15c2-11 Information to NASD;
Effective Date: June 29, 2006

Executive Summary

On March 27, 2006, the Securities and Exchange Commission (SEC) approved amendments to NASD Rule 6740 relating to submission of SEC Rule 15c2-11 information to NASD prior to quotation of non-NASDAQ securities.¹ The rule change relieves members of their obligation to file with NASD copies of information that is electronically accessible through the SEC's Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system. In addition, the rule change creates an exclusion from the requirements of Rule 6740 for quotation activity for which the SEC has granted an exemption under SEC Rule 15c2-11(h).

The amended rule language is set forth in Attachment A of this *Notice*. The amendments become effective on June 29, 2006. As of that date, members will be required to use a revised Form 211 to demonstrate compliance with Rule 6740 and SEC Rule 15c2-11. A copy of the revised Form 211 is included as Attachment B of this *Notice*. It will also be available at www.otcbb.com.

Questions/Further Information

Questions regarding this *Notice* may be directed to the Legal Section, Market Regulation, at (240) 386-5126; or Office of General Counsel, Regulatory Policy and Oversight, at (202) 728-8071. For compliance questions regarding Form 211, please contact Ken Worm, Associate Director, Market Regulation, at (240) 386-5121.

Background and Discussion

NASD Rule 6740 prohibits a member from initiating or resuming the quotation of a non-NASDAQ security² in a quotation medium unless the member has demonstrated compliance with the requirements of SEC Rule 15c2-11 pertaining to the review and maintenance of information about the security and its issuer. Generally, SEC Rule 15c2-11 requires that a broker-dealer review and maintain in its records specified information about a security and issuer (e.g., prospectuses, offering circulars and annual reports) prior to publishing a quotation for a security in any quotation medium. In addition, SEC Rule 15c2-11 requires that upon reviewing the specified information, a broker-dealer must have a reasonable basis to believe that the information is accurate in all material respects and the sources of such information are reliable.

To demonstrate compliance with both Rule 6740 and SEC Rule 15c2-11, a member must file with NASD a Form 211, together with the information required under SEC Rule 15c2-11(a), at least three business days before the quotation is published or displayed.

Submission of Information Available through SEC's EDGAR System

Much of the information that is required under SEC Rule 15c2-11(a) for reporting issuers is publicly available through the SEC's EDGAR system. As amended, Rule 6740(b) relieves members of the obligation to file with NASD copies of information that is accessible through EDGAR and thus, eliminates the administrative burden and cost imposed on members in furnishing such information to NASD. Although members are no longer required to file copies of EDGAR information with NASD, they nonetheless remain obligated to review and maintain information as required by SEC Rule 15c2-11.

In addition, members currently are required to identify on Form 211 the type and date of each report or statement that is submitted to NASD.³ The rule change does not relieve members of this obligation. Thus, where copies of documents are not submitted to NASD because they are available through EDGAR, members must identify on Form 211 the type and date of each report or statement that the member relied upon in satisfying its information review obligations under Rule 6740 and SEC Rule 15c2-11(a). In addition, members must provide the date the report or statement became available through EDGAR, as well as the requisite identifying information for any subsequent amendments to the report or statement. Finally, members also must provide the 10-digit Central Index Key (CIK) number for issuers that are EDGAR filers.⁴

Exemptions under SEC Rule 15c2-11(h)

Rule 6740(a) currently tracks the exceptions to the information review and maintenance requirements of SEC Rule 15c2-11(f), including, for example, an exception for quotations of NASDAQ securities or securities admitted to trading on a national securities exchange. Rule 6740(a), however, does not contain an exclusion for those quotations with respect to which the SEC has granted an exemption, upon request or its own motion, under SEC Rule 15c2-11(h).

As amended, Rule 6740(a) relieves members of their obligations under Rule 6740 in the event that the SEC has granted an exemption for a quotation pursuant to SEC Rule 15c2-11(h). Thus, members will not be required to review, maintain and file information under the NASD rule if there is no similar obligation under the SEC rule. To the extent that the SEC's exemptive relief applies any terms and conditions to such relief, those same terms and conditions would apply to the exclusion under Rule 6740.

Endnotes

- 1 See Securities Exchange Act Release No. 53556 (March 27, 2006), 71 FR 16603 (April 3, 2006) (File No. SR-NASD-2005-098).
- 2 For purposes of this rule, "non-NASDAQ security" is defined in Rule 6710(c) as "any equity security that is neither included in The NASDAQ Stock Market nor traded on any national securities exchange."
- 3 Under Rule 6740(b), members must also identify on the Form 211 the issuer, the issuer's predecessor in the event of a merger or reorganization within the previous 12 months, the type of non-NASDAQ security to be quoted (e.g., ADR, warrant, unit, or common stock), the quotation medium to be used, the member's initial or resumed quotation, and the particular subsection of SEC Rule 15c2-11 with which the member is demonstrating compliance.
- 4 The CIK is a unique identifier assigned by the SEC to all persons and entities that file disclosure documents through EDGAR.

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ATTACHMENT A

New language is underlined; deletions are in brackets.

6740. Submission of Rule 15c2-11 Information on Non-Nasdaq Securities

(a) Except as provided in SEC Rule 15c2-11(f)(1), (2), (3), and (5) and 15c2-11(h) under the Act, no member shall initiate or resume the quotation of a non-Nasdaq security in any quotation medium unless the member has demonstrated compliance with this rule and the applicable requirements for information maintenance under Rule 15c2-11. A member shall demonstrate compliance by making a filing with, and in the form required by, [the Association] NASD, which filing must be received at least three business days before the member's quotation is published or displayed in the quotation medium.

(b) The information to be filed shall contain one copy of all information required to be maintained under SEC Rule 15c2-11(a)(1), (2), (3)(iii), (4)(ii), or (5), including any information that may be required by future amendments thereto. Members are not required to file with NASD copies of any information that is available through the SEC's Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system; provided, however, that the filing with NASD shall contain identifying information for each issuer report or statement available through EDGAR that was relied upon in satisfying the member's obligations under this Rule and SEC Rule 15c2-11(a), including the type of report, report date and any other information as may be requested by NASD. In addition, this filing shall identify the issuer, the issuer's predecessor in the event of a merger or reorganization within the previous 12 months, the type of non-Nasdaq security to be quoted (e.g., ADR, warrant, unit, or common stock), the quotation medium to be used, the member's initial or resumed quotation, and the particular subsection of Rule 15c2-11 with which the member is demonstrating compliance. Additionally, if a member is initiating or resuming quotation of a non-Nasdaq security with a priced entry, the member's filing must specify the basis upon which that priced entry was determined and the factors considered in making that determination.

ATTACHMENT B—FORM 211

General Instructions

Complete this form to initiate or resume quotations in the OTC Bulletin Board, the Pink Sheets, or any other comparable quotation medium. By completing this form, your firm is representing that it has satisfied all applicable requirements of Securities and Exchange Commission (SEC) Rule 15c2-11 and the filing and information requirements of NASD Rule 6740. **It is not necessary to file this application if a member qualifies for an exception or exemption provided by paragraphs (f)(1)-(5) or (h) of Rule 15c2-11.**

Send the completed form, a photocopy of the completed form, and two copies of the required Issuer information to NASD, OTC Compliance Unit, 9509 Key West Avenue, Rockville, MD 20850-3329. **If you have any questions, call the OTC Compliance Unit at (240) 386-5100.**

Check the applicable quotation medium(s):

☐ OTC Bulletin Board ☐ Pink Sheets ☐ Other (name of quotation medium)

Part 1 – Issuer and Security Information

Provide the information requested below:

- 1 Exact name of Issuer and predecessor (if any) _____
- 2 Address of principal executive offices _____
- 3 Telephone number of principal executive offices _____
- 4 Type of security (check one) ☐ Domestic Security ☐ ADR ☐ Foreign Security ☐ DPP
- 5 State of incorporation _____ Country of incorporation _____
- 6 Complete title and class of security to be quoted _____
- 7 Symbol of security (if assigned) _____ CUSIP (if assigned) _____
- 8 Par or stated value of security _____
- 9 Total securities outstanding at the end of the Issuer's most recent fiscal year _____
- 10 Name and address of transfer agent _____
- 11 List any restrictions on the transfer of the security _____
- 12 Price of initial quotation entry Bid _____ Ask _____ ☐ No price at this time

If you are requesting to enter a bid and/or ask price, you must also provide a clear statement of the following information:

The basis upon which the priced entry was determined: _____

The factors considered in making that determination: _____

Part 2 – Required Issuer Information

Check the applicable box (select only one) that corresponds to the category of Issuer information accompanying this application. To determine the applicable category, carefully review paragraphs (a)(1)-(5) of Rule 15c2-11 under the Securities Exchange Act of 1934 (1934 Act) and paragraph (g), which defines “reasonably current” information for purposes of paragraph (a)(5).

Provide two copies of all required information (except for EDGAR documents) along with this completed form.

RECENT OFFERINGS

- ☐ **(a)(1)** Provide the prospectus which became effective less than 90 calendar days prior to filing this Form 211, as specified by Section 10(a) of the Securities Act of 1933 (1933 Act).

SEC Effective Date: _____ Date Security(ies) Issued: _____

- ☐ **(a)(2)** Provide the offering circular which became effective less than 40 calendar days prior to filing this Form 211, as provided for under Regulation A under the 1933 Act.

SEC Effective Date: _____ Date Security(ies) Issued: _____

- ☐ **(a)(3) REPORTING COMPANIES List:**

The Issuer’s most recent annual report filed pursuant to Section 13 or 15(d) of the 1934 Act or the annual statement referred to in Section 12(g)(2)(G)(i) of the 1934 Act. Quarterly and other current reports filed after the Issuer’s most recent annual report or statement. List below each report or statement and applicable amendments filed by the Issuer through EDGAR that your firm has in its possession that meets the requirements of this section.

Name of Report or Statement	Report or Statement Date	EDGAR Filed Date
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

☐ **(a)(4) FOREIGN PRIVATE ISSUERS**

Provide information furnished to the Securities and Exchange Commission pursuant to Rule 12g3-2(b) of the 1934 Act since the beginning of the Issuer's last fiscal year. List below the information supplied with this form.

Name of Report or Statement	Report or Statement Date	SEC Filed Date
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

☐ **(a)(5) NON-REPORTING AND ALL OTHER COMPANIES**

The applicant must make the Issuer information filed in conjunction with section (a)(5) of this form available upon request to any person expressing an interest in a proposed transaction with the subject security filed. Provide the Issuer's most recent balance sheet, profit and loss and retained earnings statements, equivalent financial information for the two prior fiscal years for the Issuer or any predecessor company, and the documents that support the information provided in this form.

- a. Describe the Issuer's business. _____
- b. Describe the products or services offered by the Issuer. _____
- c. Describe the Issuer's facilities. _____
- d. List the name(s) of the current Chief Executive Officer(s) and members of the Board of Directors of the Issuer. _____
- e. Is the member firm submitting this form, or any person associated with it, affiliated directly or indirectly with the Issuer? ☐ Yes ☐ No If yes, what is the affiliation? _____
- f. Is the quotation being published or submitted on behalf of any other broker-dealer? ☐ Yes ☐ No If yes, what is the name of the broker or dealer? _____
- g. Is the quotation being published or submitted directly or indirectly on behalf of the Issuer or any director, officer or any person who is directly or indirectly the beneficial owner of more than 10% of the outstanding units or shares of any equity security of the Issuer? ☐ Yes ☐ No If yes, what is the name of the person, and what is the basis for any exemption under the federal securities laws for any sales of such securities on behalf of this person? _____

Part 3 – Supplemental Information

Please review paragraphs (b)(1)-(3) of Rule 15c2-11 and provide the information requested below.

(b)(1) Describe the circumstances surrounding the submission of this application. Include the identity of any person(s) for whom the quotation is being submitted and any information provided to your firm by such person(s). _____

(b)(2) Has the Issuer or its predecessor (if any) been subject to a trading suspension order issued by the SEC during the past 12 months? If a trading suspension order has been issued, provide two copies of the order or of the SEC's public release announcing the trading suspension order.

Check the appropriate box: ☐ Trading suspension order or release enclosed. ☐ Not applicable.

(b)(3) Provide any material information, including adverse information, regarding the Issuer, that your firm is aware of or has in its possession (Do not list information already provided in Part 2). If your firm does not possess such information, state "None" below.

Identify any applicable information by name and date. _____

Part 4 – (Complete for OTC Bulletin Board quotation requests only)

Fiscal Year End Date (MM/DD) _____

Date of Incorporation (MM/DD/YYYY) _____

Standard Industrial Classification (SIC) Code _____

(a) Complete if the Issuer files periodic reports through the SEC's EDGAR system.

- Provide the 10-digit Central Index Key (CIK) number. _____
(The CIK is a unique identifier assigned by the SEC to all companies and people who file disclosure documents through EDGAR with the SEC)

(b) Complete if the Issuer does not file periodic reports through the SEC's EDGAR system.

- Name of regulatory authority where the Issuer files periodic financial reports. _____
- Telephone number of the regulatory authority. _____
- The Issuer's filing cycle. (Check one)
 - ☐ Quarterly
 - ☐ Semi-annually
 - ☐ Annually
 - ☐ Other (Describe the filing cycle) _____
- List the required reports filed by the Issuer for the current fiscal year.

Name of Report	Due Date of Report	Date of Report
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Part 5 – Certification

The undersigned must have a reasonable basis for believing that the information accompanying this form is accurate in all material respects and that the sources of the information are reliable.

By signing this document, I acknowledge and certify that my member firm has a reasonable basis for believing that the information accompanying this form (including required EDGAR filed documents not provided) is accurate in all material respects and that the sources of the information are reliable (“affirmative review obligation”) as required by Rule 15c2-11 under the 1934 Act and NASD Rule 6740. I understand and acknowledge that this affirmative review obligation applies to all subsequent submissions made in connection with this Form 211 application. Further, I certify that I have examined this form and, to the best of my knowledge and belief, it is true, correct, and complete. I understand and acknowledge that copies of this form, accompanying documents, and subsequent submissions made in connection with this Form 211 application may be provided to the Securities and Exchange Commission, or other regulatory agencies, Pink Sheets LLC, and to the public upon request through the Pink Sheets LLC.

Name, title and signature of member firm employee to contact regarding information contained in this Form 211 application.

Name	Title
Signature	Date
Phone	Fax

Name, title, and signature of the registered principal of the member firm responsible for this Form 211 application, and all subsequent submissions made in connection with this application.

Name	Title
Signature	Date
Firm Name	

(Member firm must be a Pink Sheets LLC subscriber if application is for the Pink Sheets.)

Address		
City	State	Zip
Member firm CRD#	Market Participant Identifier	