

August 28, 2003

Katherine A. England  
Assistant Director  
Division of Market Regulation  
Securities and Exchange Commission  
450 Fifth Street, N.W.  
Washington, D.C. 20549-1001

**Re: File No. SR-NASD-2003-136 – Amendments to NASD Rules 1013 and 1140**

Dear Ms. England:

Pursuant to Rule 19b-4, enclosed please find the above-numbered rule filing. Also enclosed is a 3-1/2" disk containing the rule filing in Microsoft Word 7.0 to facilitate production of the Federal Register release.

If you have any questions, please contact Patricia Albrecht, Office of General Counsel, Regulatory Policy and Oversight, at (202) 728-8026; e-mail [patricia.albrecht@nasd.com](mailto:patricia.albrecht@nasd.com). The fax number of the Office of General Counsel is (202) 728-8264.

Very truly yours,

Barbara Z. Sweeney  
Senior Vice President  
and Corporate Secretary

Enclosures

File No. SR-NASD-2003-136  
Consists of 19 Pages  
August 28, 2003

**SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C.

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Form 19b-4

Proposed Rule Change

by

**NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.**

Pursuant to Rule 19b-4 under the  
Securities Exchange Act of 1934

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”), the National Association of Securities Dealers, Inc. (“NASD”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to amend NASD Rule 1013 to eliminate the requirement that new member applicants include in their membership applications signed, paper Forms U4 for each associated person who is required to be registered under NASD Rules and, instead, to require new member applicants to file these Forms U4 electronically. The proposed rule change also amends Rule 1140 to require new member applicants to follow the same procedures members must follow when making electronic Form U4 filings. In addition, the proposed rule change makes certain technical changes to Rules 1013 and 1140.

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

\* \* \* \* \*

**1000. Membership, Registration and Qualification Requirements**

\* \* \* \* \*

**1013. New Member Application and Interview**

**(a) Filing of Application**

**(1) Where to File**

An Applicant for [Association] NASD membership shall file its application with the Department of Member Regulation at the district office in the district in which the Applicant intends to have its principal place of business as defined in Rule 1011(l).

**(2) Contents**

The application shall include:

(A) an original signed and notarized paper Form BD, with applicable schedules;

[(B) an original signed paper Form U-4 for each Associated Person who is required to be registered under the Rules of the Association;]

(C) through (H) Renumbered as (B) through (G).

[(I)] (H) documentation of any of the following events, unless the event has been reported to the Central Registration Depository:

(i) through (ii) No change.

(iii) an investment-related customer complaint or arbitration that is required to be reported on Form U4 [U-4];

(iv) through (v) No change.

(J) through (S) Renumbered as (I) through (R).

**(3) Electronic Filings**

Upon approval of the Applicant's Web CRD entitlement request form, the Applicant shall submit its Forms U4 for each Associated Person who is required to be registered under NASD Rules, any amendments to its Forms BD or U4 [U-4, any additional Forms U-4], and any Form U5 [U-5] electronically via Web CRD.

\* \* \* \* \*

(4) through (7) No change.

(b) No change.

\* \* \* \* \*

#### 1140. Electronic Filing Rules

(a) through (b) No change.

##### (c) Form U4 [U-4] Filing Requirements

(1) [~~Initial and transfer electronic application filings~~] Every initial and transfer electronic Form U4 filing shall be based on a signed Form U4 [U-4] provided to the member or applicant for membership by the person on whose behalf the Form U4 is being filed [applicant]. As part of the member's recordkeeping requirements, it shall retain the [applicant's] person's signed Form U4 [U-4] and make it available promptly upon regulatory request. An applicant for membership also must retain every signed Form U4 it receives during the application process and make them available promptly upon regulatory request.

##### (2) Fingerprint Cards

Upon filing an electronic Form U4 [U-4] on behalf of [~~an applicant~~] a person applying for registration, a member shall promptly submit a fingerprint card for [the applicant] that person. NASD [Regulation] may make a registration effective pending receipt of the fingerprint card. If a member fails to submit a fingerprint card within 30 days after NASD [Regulation] receives the electronic Form U4 [U-4], the person's registration shall be deemed inactive. In such case, NASD [Regulation] shall notify the member that the person must immediately cease all activities requiring registration and is prohibited from performing any duties and functioning in any capacity requiring registration. NASD [Regulation] shall administratively terminate a registration that is

inactive for a period of two years. A person whose registration is administratively terminated may reactivate the registration only by reapplying for registration and meeting the qualification requirements of the applicable provisions of the Rule 1020 Series and the Rule 1030 Series. Upon application and a showing of good cause, [the Association] NASD may extend the 30-day period.

(d) through (e) No change.

\* \* \* \* \*

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

(a) The proposed rule change has been approved by the Board of Governors of NASD (“Board”) and authorized for filing with the SEC pursuant to a delegation of authority granted by the Board at its meeting on January 23, 2003, to the General Counsel of NASD Regulatory Policy and Oversight (or his officer designee) to file, without further specific Board authorization, administrative, technical, conforming, and non-substantive changes to NASD rules (“Delegation of Authority”). Counsel for The Nasdaq Stock Market and NASD Dispute Resolution were provided an opportunity to consult with respect to the Delegation of Authority, pursuant to the Plan of Allocation and Delegation of Functions by NASD to its Subsidiaries. The staff will advise the Board of any action taken pursuant to the Delegation of Authority. No other action by NASD is necessary for the filing of the proposed rule change. Section 1(a)(ii) of Article VII of the NASD By-Laws permits the NASD Board of Governors to adopt amendments to NASD Rules without recourse to the membership for approval. The proposed rule change is effective

immediately upon filing. NASD will announce the implementation date of the proposed rule change in a Notice to Members to be published no later than 30 days following NASD's filing of the proposed rule change with the Commission. The implementation date will be 30 days from the publication of the Notice to Members.

(b) Questions regarding this rule filing may be directed to Patricia Albrecht, Assistant General Counsel, Office of General Counsel, Regulatory Policy and Oversight, at (202) 728-8026.

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

NASD staff has been working to make its membership application process more efficient and less burdensome for applicants. As part of that effort, NASD staff proposes to eliminate Rule 1013's current requirement that an applicant for NASD membership submit with its membership application an original, signed paper Form U4 for each of the applicant's proposed associated persons who are required to be registered with NASD. Instead, the proposed rule change will require that, upon approval of the applicant's Web CRD entitlement request form, the applicant will file such Forms U4 electronically via Web CRD.

NASD Rule 1013(a)(3) already requires that an applicant, upon approval of its Web CRD entitlement request form, electronically submit any amendments to its filed Form BD and Forms U4 and any additional Forms U4 or Forms U5 not submitted with the membership application. By extending the electronic filing requirement to include all Form U4 filings an applicant must submit in connection with its membership application, the proposed rule change allows an applicant to use one unified process for all its Form U4 submissions in the membership application process and

reduces the amount of paperwork the applicant must submit with its membership application.

The proposed change will also lessen the burden on NASD staff receiving the membership application because it will eliminate the need to separate the Forms U4 from the membership application material and route them to the appropriate office for review and entry into the Web CRD system. Also, because the proposed change will result in the applicant filing the Forms U4 directly with Web CRD, NASD Web CRD staff will not experience any delays that might occur from the routing process.

In connection with the new electronic Form U4 filing requirement, NASD is also proposing to amend Rule 1140 to apply to applicants the same electronic filing requirements that members must follow when filing electronic Forms U4. Currently, Rule 1140 requires that every electronic Form U4 filing made by a member be based on a signed Form U4 provided by the associated person. Rule 1140 also requires that the member, as part of its recordkeeping requirements, retain the signed Forms U4 and make them available promptly upon regulatory request. The proposed changes to Rule 1140 will require an applicant to follow these same procedures when making electronic Form U4 filings. These requirements will help ensure that associated persons have reviewed and accepted the information and representations provided with the electronic Form U4.

Finally, the proposed rule change makes several technical changes to Rules 1013 and 1140. First, the references in these rules to “Form U-4” and “Form U-5” are being changed to “Form U4” and “Form U5,” respectively.<sup>1</sup> Second, Rule 1011(a) defines “applicant” to mean

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<sup>1</sup> This change is being made in accordance with SR-NASD-2003-57 (Rule Change to Revise Uniform Application for Securities Industry Registration or Transfer (Form U-4) and Uniform Termination Notice for Securities Industry Registration (Form U-5), which changed the references for Forms “U-4” and “U-5” to “U4” and “U5.” SEC Release No. 34-48161 (July 16, 2003) 68 FR 42444 (July 17, 2003).



either a person applying for NASD membership under Rule 1013 or a member filing an application under Rule 1017 for approval of a change in ownership, control, or business operations.

However, the current use of the term “applicant” in Rule 1140 is inconsistent with this definition because it currently uses the term “applicant” to refer to the person on whose behalf the electronic Form U4 filing is being made. Accordingly, the rule change would replace references to “applicant” in Rule 1140 with references to persons on whose behalf Forms U4 filings are being made, as appropriate. Finally, NASD no longer refers to itself or its subsidiary, NASD Regulation, Inc., using its full corporate name, “the Association,” “the NASD” or “NASD Regulation.” Instead, NASD uses the name “NASD” unless otherwise appropriate for corporate or regulatory reasons. Accordingly, the proposed rule change replaces, as a technical change, several references to “the Association” and “NASD Regulation” in Rules 1013 and 1140 with the name “NASD.”

(b) Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, 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. The proposed rule change amends NASD Rule 1013 to eliminate the requirement that new member applicants include in their membership applications signed, paper Forms U4 for each proposed associated person who is required to be registered under NASD Rules and, instead, to require new member applicants to file these Forms U4 electronically. The proposed rule change also amends Rule 1140 to require new member applicants to follow the same procedures members must follow when making

electronic Form U4 filings. In addition, the proposed rule change makes certain technical changes to Rules 1013 and 1140.

4. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>2</sup> of the Act and paragraph (f)(6) of Rule 19b-4 thereunder,<sup>3</sup> in that the proposed rule change does not become operative for 30 days after the date of filing, does not significantly affect the protection of investors or the public interest and does not impose any significant burden on competition. In accordance with Rule 19b-4(f)(6)(iii),<sup>4</sup> NASD has submitted written notice of its intent to file the proposed rule change along with a brief description and text of the proposed rule change at least five business days prior to the date of filing. Accordingly, the proposed rule change is effective

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<sup>2</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>3</sup> 17 CFR 240.19b-4(f)(6).

<sup>4</sup> 17 CFR 240.19b-4(f)(6)(iii).

upon filing pursuant to Section 19(b)(3)(A)<sup>5</sup> of the Act and Rule 19b-4(f)(6)<sup>6</sup> thereunder.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Exhibits

1. Completed notice of proposed rule change for publication in the Federal Register.

Pursuant to the requirements of the Securities Exchange Act of 1934, NASD has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

NASD

BY: \_\_\_\_\_  
Barbara Z. Sweeney, Senior Vice President and  
Corporate Secretary

Date: August 28, 2003

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<sup>5</sup> 15 U.S.C. 78s(b)(3)(A)(i)

<sup>6</sup> 17 CFR 240.19b-4(f)(6).

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34- ; File No. SR-NASD-2003-136)

Self-Regulatory Organizations; Notice of Filing and Order Granting Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Amendments to NASD Rules 1013 and 1140

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on \_\_\_\_\_, 2003, the National Association of Securities Dealers, Inc. (“NASD”), through its General Counsel for Regulatory Policy and Oversight, filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. NASD has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,<sup>3</sup> which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. SELF-REGULATORY ORGANIZATION'S STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

NASD is proposing to amend NASD Rule 1013 to eliminate the requirement that new member applicants include in their membership applications signed, paper Forms U4 for each proposed associated person who is required to be registered under NASD Rules and, instead, to require new member applicants to file these Forms U4 electronically. NASD is also proposing to

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

amend Rule 1140 to require new member applicants to follow the same procedures members must follow when making electronic Form U4 filings. In addition, NASD is proposing technical changes to Rules 1013 and 1140. Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

\* \* \* \* \*

## **1000. Membership, Registration and Qualification Requirements**

\* \* \* \* \*

### **1013. New Member Application and Interview**

#### **(a) Filing of Application**

##### **(1) Where to File**

An Applicant for [Association] NASD membership shall file its application with the Department of Member Regulation at the district office in the district in which the Applicant intends to have its principal place of business as defined in Rule 1011(l).

##### **(2) Contents**

The application shall include:

(A) an original signed and notarized paper Form BD, with applicable schedules;

[(B) an original signed paper Form U-4 for each Associated Person who is required to be registered under the Rules of the Association;]

(C) through (H) Renumbered as (B) through (G).

[(I)] (H) documentation of any of the following events, unless the event has

been reported to the Central Registration Depository:

(i) through (ii) No change.

(iii) an investment-related customer complaint or arbitration that is required to be reported on Form U4 [U-4];

(iv) through (v) No change.

(J) through (S) Renumbered as (I) through (R).

### **(3) Electronic Filings**

Upon approval of the Applicant's Web CRD entitlement request form, the Applicant shall submit its Forms U4 for each Associated Person who is required to be registered under NASD Rules, any amendments to its Forms BD or U4 [U-4], any additional Forms U-4], and any Form U5 [U-5] electronically via Web CRD.

\* \* \* \* \*

(4) through (7) No change.

(b) No change.

\* \* \* \* \*

### **1140. Electronic Filing Rules**

(a) through (b) No change.

(c) Form U4 [U-4] Filing Requirements

(1) [~~Initial and transfer electronic application filings~~] Every initial and transfer electronic Form U4 filing shall be based on a signed Form U4 [U-4] provided to the member or applicant for membership by the person on whose behalf the Form U4 is being filed [applicant]. As part of the member's recordkeeping requirements, it shall retain the

[~~applicant's~~] person's signed Form U4 [U-4] and make it available promptly upon regulatory request. An applicant for membership also must retain every signed Form U4 it receives during the application process and make them available promptly upon regulatory request.

(2) Fingerprint Cards

Upon filing an electronic Form U4 [U-4] on behalf of [~~an applicant~~] a person applying for registration, a member shall promptly submit a fingerprint card for [~~the applicant~~] that person. NASD [Regulation] may make a registration effective pending receipt of the fingerprint card. If a member fails to submit a fingerprint card within 30 days after NASD [Regulation] receives the electronic Form U4 [U-4], the person's registration shall be deemed inactive. In such case, NASD [Regulation] shall notify the member that the person must immediately cease all activities requiring registration and is prohibited from performing any duties and functioning in any capacity requiring registration. NASD [Regulation] shall administratively terminate a registration that is inactive for a period of two years. A person whose registration is administratively terminated may reactivate the registration only by reapplying for registration and meeting the qualification requirements of the applicable provisions of the Rule 1020 Series and the Rule 1030 Series. Upon application and a showing of good cause, [~~the Association~~] NASD may extend the 30-day period.

(d) through (e) No change.

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II. SELF-REGULATORY ORGANIZATION'S STATEMENT OF THE PURPOSE OF, AND STATUTORY BASIS FOR, THE PROPOSED RULE CHANGE

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

NASD staff has been working to make its membership application process more efficient and less burdensome for applicants. As part of that effort, NASD staff proposes to eliminate Rule 1013's current requirement that an applicant for NASD membership submit with its membership application an original, signed paper Form U4 for each of the applicant's proposed associated persons who are required to be registered with NASD. Instead, the proposed rule change will require that, upon approval of the applicant's Web CRD entitlement request form, the applicant will file such Forms U4 electronically via Web CRD.

NASD Rule 1013(a)(3) already requires that an applicant, upon approval of its Web CRD entitlement request form, electronically submit any amendments to its filed Form BD and Forms U4 and any additional Forms U4 or Forms U5 not submitted with the membership application. By extending the electronic filing requirement to include all Form U4 filings an applicant must submit in connection with its membership application, the proposed rule change allows an applicant to use one unified process for all its Form U4 submissions in the membership application process and



reduces the amount of paperwork the applicant must submit with its membership application.

The proposed change will also lessen the burden on NASD staff receiving the membership application because it will eliminate the need to separate the Forms U4 from the membership application material and route them to the appropriate office for review and entry into the Web CRD system. Also, because the proposed change will result in the applicant filing the Forms U4 directly with Web CRD, NASD Web CRD staff will not experience any delays that might occur from the routing process.

In connection with the new electronic Form U4 filing requirement, NASD is also proposing to amend Rule 1140 to apply to applicants the same electronic filing requirements that members must follow when filing electronic Forms U4. Currently, Rule 1140 requires that every electronic Form U4 filing made by a member be based on a signed Form U4 provided by the associated person. Rule 1140 also requires that the member, as part of its recordkeeping requirements, retain the signed Forms U4 and make them available promptly upon regulatory request. The proposed changes to Rule 1140 will require an applicant to follow these same procedures when making electronic Form U4 filings. These requirements will help ensure that associated persons have reviewed and accepted the information and representations provided with the electronic Form U4.

Finally, the proposed rule change makes several technical changes to Rules 1013 and 1140. First, the references in these rules to “Form U-4” and “Form U-5” are being changed to “Form U4” and “Form U5,” respectively.<sup>4</sup> Second, Rule 1011(a) defines “applicant” to mean

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<sup>4</sup> This change is being made in accordance with SR-NASD-2003-57 (Rule Change to Revise Uniform Application for Securities Industry Registration or Transfer (Form U-4) and Uniform Termination Notice

either a person applying for NASD membership under Rule 1013 or a member filing an application under Rule 1017 for approval of a change in ownership, control, or business operations.

However, the current use of the term “applicant” in Rule 1140 is inconsistent with this definition because it currently uses the term “applicant” to refer to the person on whose behalf the electronic Form U4 filing is being made. Accordingly, the rule change would replace references to “applicant” in Rule 1140 with references to persons on whose behalf Forms U4 filings are being made, as appropriate. Finally, NASD no longer refers to itself or its subsidiary, NASD Regulation, Inc., using its full corporate name, “the Association,” “the NASD” or “NASD Regulation.” Instead, NASD uses the name “NASD” unless otherwise appropriate for corporate or regulatory reasons. Accordingly, the proposed rule change replaces, as a technical change, several references to “the Association” and “NASD Regulation” in Rules 1013 and 1140 with the name “NASD.”

(b) Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, 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. The proposed rule change amends NASD Rule 1013 to eliminate the requirement that new member applicants include in their membership applications signed, paper Forms U4 for each proposed associated person who is required to be registered under NASD Rules and, instead, to require new member applicants to

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for Securities Industry Registration (Form U-5), which changed the references for Forms “U-4” and “U-5” to “U4” and “U5.” SEC Release No. 34-48161 (July 16, 2003) 68 FR 42444 (July 17, 2003).

file these Forms U4 electronically. The proposed rule change also amends Rule 1140 to require new member applicants to follow the same procedures members must follow when making electronic Form U4 filings. In addition, the proposed rule change makes certain technical changes to Rules 1013 and 1140.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. DATE OF EFFECTIVENESS OF THE PROPOSED RULE CHANGE AND TIMING FOR COMMISSION ACTION

The proposed rule change has been filed by NASD as a “non-controversial” rule change under Rule 19b-4(f)(6) under the Act.<sup>5</sup> Consequently, because the foregoing proposed rule change: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of on which it was filed, and NASD provided the Commission with written

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<sup>5</sup> 17 CFR 240.19b-4(f)(6).

notice of its intent to file the proposed rule change at least five days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.

IV. SOLICITATION OF COMMENTS

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of NASD. All submissions should refer to the file number in the caption above and should be submitted by **[insert date 21 days from the date of publication]**.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>6</sup> 17 CFR 200.30-3(a)(12).