

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 also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2006-28 and should be submitted on or before April 25, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

Nancy M. Morris,  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53564; File No. SR-NASD-2006-038]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Proposed Amendments to NASD Rule 1013 To Adopt a Standardized New Member Application Form (Form NMA)

March 29, 2006.

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 March 3, 2006, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("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 pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with 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 Rule 1013 (New Member Application and Interview) to adopt a standardized new member application form, Form NMA, to be used by all new applicants applying for membership to NASD. The proposed rule change also makes several technical changes to NASD Rules 1013 and 1014. The proposed new form is available at NASD, the Commission, and at <http://www.nasd.com>. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in [brackets].

\* \* \* \* \*

#### 1013. New Member Application and Interview

##### (a) Filing of Application

(1)—No Change.

##### (2) Contents

*An Applicant shall submit an application using NASD Form NMA. The application shall include:*

(A) Through (Q) No Change.

(R) [a Web CRD entitlement request form] *an NASD Entitlement Program Agreement and Terms of Use and an NASD Member Firm Account Administrator Entitlement Form* [a Member Contact Questionnaire user access request form].

##### (3) Electronic Filings

Upon approval of the Applicant's [Web CRD entitlement request form] *NASD Member Firm Account Administrator Entitlement 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 and any Form U5 electronically via Web CRD. [Upon approval of the Applicant's membership, the Applicant shall submit any amendments to its Member Contact Questionnaire electronically.]

(4) through (5) No Change.

##### (b) Membership Interview

(1) through (7) No Change.

\* \* \* \* \*

#### 1014. Department Decision

##### (a). Standards for Admission

(1) through (5) No Change.

(6) The communications and operational systems that the Applicant intends to employ for the purpose of conducting business with customers and other members are adequate and

provide reasonably for business continuity in each area set forth in Rule 1013(a)(2)([F]E)(xii);

(7) through (14) No change.

\* \* \* \* \*

#### 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

###### 1. Purpose

NASD staff has been working to make its membership application process more efficient and less burdensome for both new applicants and the staff. Applying for NASD membership is an intensive process requiring considerable attention to detail as well as a substantial time commitment. NASD Rule 1013 (New Member Application and Interview) identifies the requirements for submitting a new member application for NASD membership, including a listing of the necessary documents and a requirement that the applicant submit a "substantially complete" application.<sup>5</sup> Pursuant to NASD Rule 1013(a)(4), NASD can reject an application that is not substantially complete.

Although NASD Rule 1013 contains a listing of the requirements for a new member application submission, NASD continues to receive incomplete or inadequate membership applications. Such applications often require NASD staff to serve requests for significant additional information or documentation to the applicant and require a great deal of NASD staff time and resources to process appropriately. Applications initially submitted with inadequate or incomplete information result in increased processing times, which can have the effect of significantly delaying when an applicant can begin conducting business as a member of NASD.

To address these issues, NASD is proposing to amend NASD Rule 1013 to

<sup>5</sup> See NASD Rule 1013(a)(4).

<sup>13</sup> 17 CFR 200.30-3(a)(12).

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

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

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

<sup>4</sup> 17 CFR 240.19-4(f)(6). NASD gave the Commission written notice of its intent to file this proposed rule change on February 8, 2006.

include a requirement to use New Member Application Form ("Form NMA") to submit any applications for NASD membership. Form NMA will not establish new or additional content requirements, which are already set forth in NASD Rule 1013, but rather, will be a means to assist new member applicants in the preparation of a complete application package. Form NMA will be organized according to the 14 individual standards for membership enumerated in NASD Rule 1014, and will list all required exhibits, forms and supporting documentation required in an application submission.

Additionally, Form NMA will identify certain information as mandatory or required submissions in the initial application. If such "mandatory" information is not provided in the initial application submission, the application will be deemed not "substantially complete" pursuant to NASD Rule 1013(a)(4) and will be rejected.<sup>6</sup>

By requiring member applicants to use the prescribed Form NMA, NASD expects to streamline the application process by creating one unified application process and clearly outlining the information that must be submitted to process the application. Additionally, using the prescribed form will expedite the application review and approval process and will also lessen the burden on NASD staff reviewing the membership application by making the process of reviewing applications for completeness more efficient.

Once the proposed rule change becomes effective and operative, NASD will make Form NMA available to applicants as part of NASD's *New Member Application Package* and through NASD's Web site. Applicants will be required to submit Form NMA, along with required exhibits, as an original, signed paper form. Additionally, NASD staff intends to develop systems that will allow applicants to submit Form NMA electronically via Web CRD®.

Finally, NASD is making several technical changes. Specifically, NASD is deleting NASD Rule 1013's references to the Web CRD entitlement request form and Member Contact Questionnaire user access request form and, where appropriate, replacing those references with the forms' respective new titles—

<sup>6</sup> NASD can deem an application to be not "substantially complete" for other reasons. Such a determination is made based on the facts and circumstances of the application, the information and documentation requirements of NASD Rule 1013, the nature and complexity of the application, and the nature and extent of the missing or incomplete documentation.

NASD Entitlement Program Agreement and Terms of Use and NASD Member Firm Account Administrator Entitlement Form. NASD is also changing an incorrect cite in NASD Rule 1014(a)(6) from NASD Rule 1013(a)(2)(F)(xii) to NASD Rule 1013(a)(2)(E)(xii).

This proposed rule change is effective upon filing. NASD will announce the implementation date of the proposed rule change in a *Notice to Members* to be published no later than 60 days following Commission notice of the filing of the rule change for immediate effectiveness. The implementation date will be 30 days from the publication of the *Notice to Members*.

## 2. Statutory Basis

NASD believes that the proposed rule change is consistent with Section 15A of the Act,<sup>7</sup> in general, and furthers the objectives of Section 15A(b)(6) of the Act,<sup>8</sup> in particular, 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 require new member applications to be submitted using Form NMA. The proposed rule change does not propose any new or additional content requirements for member applications.

### 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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section

19(b)(3)(A) of the Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2006-038 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASD-2006-038. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 the filing also will be available for inspection and copying at the principal office of NASD.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You

<sup>7</sup> 15 U.S.C. 78o-3.

<sup>8</sup> 15 U.S.C. 78o-3(b)(6).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

should submit only information that you wish to make available publicly. All submissions should refer to the File Number SR–NASD–2006–038 and should be submitted on or before April 25, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

Nancy M. Morris,  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53562; File No. SR–NASD–2006–005]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change To Expand the Scope of NASD Rule 2440 and Interpretive Material 2440 Relating to Fair Prices and Commissions To Apply to All Securities Transactions

March 29, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> notice is hereby given that on January 19, 2006, the National Association of Securities Dealers, Inc. (“NASD”) 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. 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 proposes to expand the scope of NASD Rule 2440 (Fair Prices and Commissions) and Interpretive Material (“IM”) 2440 relating to fair prices and commissions to apply to all securities transactions, whether executed over-the-counter (“OTC”) or on an exchange. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

#### 2440. Fair Prices and Commissions

In [“over-the-counter”] securities transactions, whether in “listed” or “unlisted” securities, if a member buys for his own account from his customer,

or sells for his own account to his customer, he shall buy or sell at a price which is fair, taking into consideration all relevant circumstances, including market conditions with respect to such security at the time of the transaction, the expense involved, and the fact that he is entitled to a profit; and if he acts as agent for his customer in any such transaction, he shall not charge his customer more than a fair commission or service charge, taking into consideration all relevant circumstances, including market conditions with respect to such security at the time of the transaction, the expense of executing the order and the value of any service he may have rendered by reason of his experience in and knowledge of such security and the market therefor.

#### IM–2440. Mark-Up Policy

The question of fair mark-ups or spreads is one which has been raised from the earliest days of the Association. No definitive answer can be given and no interpretation can be all-inclusive for the obvious reason that what might be considered fair in one transaction could be unfair in another transaction because of different circumstances. In 1943, the Association’s Board adopted what has become known as the “5% Policy” to be applied to transactions executed for customers. It was based upon studies demonstrating that the large majority of customer transactions were effected at a mark-up of 5% or less. The Policy has been reviewed by the Board of Governors on numerous occasions and each time the Board has reaffirmed the philosophy expressed in 1943. Pursuant thereto, and in accordance with Article VII, Section 1(a)(ii) of the By-Laws, the Board has adopted the following interpretation under Rule 2440.

It shall be deemed a violation of Rule 2110 and Rule 2440 for a member to enter into any transaction with a customer in any security at any price not reasonably related to the current market price of the security or to charge a commission which is not reasonable.

(a) through (b) No change.

(c) Transactions to Which the Policy is Applicable.

The policy applies to all securities[ handled in the over-the-counter market], whether oil royalties or any other security, in the following types of transactions:

(1) through (5) No change.

(d) No change.

\* \* \* \* \*

#### 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. 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

###### 1. Purpose

NASD Rule 2440 generally requires NASD members, in any OTC transaction with or for a customer, to charge only fair commissions or charges, and to buy or sell securities only at fair prices.<sup>3</sup> Specifically, NASD Rule 2440 provides, in part, that a member is required to buy or sell a security at a fair price to customers, “taking into consideration all relevant circumstances, including market conditions with respect to such security at the time of the transaction, the expense involved, and the fact that he is entitled to a profit \* \* \*” and if the member acts as agent, the member will not “charge his customer more than a fair commission or service charge, taking into consideration all relevant circumstances, including market conditions with respect to such security at the time of the transaction, the expense of executing the order and the value of any service he may have rendered by reason of his experience in and knowledge of such security and the market therefore.” The related Mark-Up Policy, IM–2440, provides additional guidance on mark-ups and fair pricing of securities transactions with customers and states that it is inconsistent with just and equitable principles of trade under NASD Rule 2110 for a member to enter into any transaction with a customer in any security at any price not reasonably related to the current market price of the security or to charge a commission that is not reasonable.

NASD Rule 2440 and IM–2440 apply only to OTC transactions. There is no NASD rule that specifically addresses commissions or mark-ups (and mark-downs) for non-OTC transactions (*i.e.*, exchange transactions). Although the language of NASD Rule 2440 and IM–2440 specifically limits their application

<sup>3</sup> See NASD Rule 2440.

<sup>11</sup> 17 CFR 200.30–3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b–4.