



June 4, 2007

Ms. Nancy M. Morris  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-1090

**Re: File No. SR-NASD-2006-074 – Proposed Rule Change Relating to the Application of NASD Rule 2790 to Issuer-Directed Securities: Response to Comment**

Dear Ms. Morris:

NASD staff has reviewed the comment letter received by the Securities and Exchange Commission (“SEC” or “Commission”) in response to SR-NASD-2006-074.<sup>1</sup> The response to this comment letter is provided below.

I. Background

The proposed rule change seeks to make the following amendments to NASD Rule 2790. First, it would amend subparagraph (d)(1) to prohibit expressly issuer-directed allocations of new issues to a broker-dealer. Second, it would add a new subparagraph, designated (d)(2), to expand the exemption for securities that are directed by the issuer to include offerings sold entirely on a non-underwritten basis, where no broker-dealer solicits or sells any new issue securities in the offering, and where no broker-dealer has any involvement or influence, directly or indirectly, in the issuer’s allocation decisions with respect to any of the new issue securities in the offering. The SEC published the proposed rule change for comment in the Federal Register on January 25, 2007, and received one comment letter on the proposal.<sup>2</sup>

II. Response to Comment

Morgan Lewis’s letter strongly supports the proposed rule change. Morgan Lewis requests, however, that the Commission specifically state in its order approving the proposed rule change that the exemption in proposed subparagraph (d)(2) would be

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<sup>1</sup> See Securities Exchange Act Release No. 55128 (January 18, 2007), 72 FR 3453 (January 25, 2007) (Notice of Filing of Proposed Rule Change Relating to the Application of NASD Rule 2790 to Issuer-Directed Securities).

<sup>2</sup> Letter from Morgan, Lewis & Bockius LLP to Nancy M. Morris, Secretary, SEC, dated February 15, 2007 (“Morgan Lewis”).

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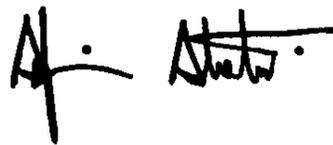
available in circumstances where the issuer engages a broker-dealer to provide advisory services, such as rendering advice regarding capital structure and capital raising, so long as the conditions in proposed subparagraph (d)(2) continue to be satisfied. NASD does not believe that such a clarification is necessary. Subparagraph (d)(2) clearly enumerates the conditions that must be satisfied to qualify for the exemption. Moreover, nothing in subparagraph (d)(2) would prevent an issuer from engaging a broker-dealer to provide the advisory services described in Morgan Lewis's letter or other limited services, so long as the conditions set forth in the subparagraph continue to be satisfied.

In addition, Morgan Lewis requests that the Commission state in its order approving the proposed rule change that a purchaser may reasonably rely on a representation from the issuer that no broker-dealer has engaged in the conduct specified in proposed subparagraph (d)(2), so long as the purchaser neither knows, nor has reason to know, that the representation is inaccurate.

NASD believes that for purposes of compliance with proposed subparagraph (d)(2), a member or associated person that wishes to purchase new issues in such offerings may rely on a written representation obtained in good faith from the issuer that the conditions in subparagraph (d)(2) are satisfied. However, the member or associated person may not rely upon any representation from the issuer that it believes, or has reason to believe, is inaccurate.

NASD believes that the foregoing fully responds to material issues raised by the commenter to the rule filing. If you wish to discuss this matter further, please feel free to contact me at (202) 728-8902.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Afshin Atabaki', with a horizontal line extending to the right.

Afshin Atabaki  
Assistant General Counsel

cc: Racquel L. Russell, Branch Chief, Division of Market Regulation