

Notice to Members

SEPTEMBER 2003

SUGGESTED ROUTING

Legal & Compliance
Operations
Registration
Senior Management

KEY TOPICS

Central Registration Depository
Form U4
New Member Application
Rule 1013
Rule 1140

INFORMATIONAL

Forms U4

Rule Amendments to Require Member Applicants to File Forms U4 Electronically; **Operative Date: October 27, 2003**

Executive Summary

NASD has amended Rule 1013 (New Member Application and Interview) to eliminate the requirement that new member applicants include in their membership applications signed, paper Forms U4 for their proposed associated persons. Rule 1013, as amended, requires new member applicants to file these Forms U4 electronically. NASD also has amended Rule 1140 (Electronic Filing Rules) to require new member applicants to follow the same procedures members must follow when making electronic Form U4 filings. The approved rule changes also make certain technical changes to Rules 1013 and 1140. Questions and answers explaining how members should comply with the amendments are included in Attachment A. The amendments are included with this *Notice* as Attachment B. The amendments to Rules 1013 and 1140 were filed with the Securities and Exchange Commission for immediate effectiveness on August 28, 2003;¹ the amendments, however, do not become operative until October 27, 2003.

Questions/Further Information

Questions concerning this *Notice* may be directed to the Office of General Counsel, NASD Regulatory Policy and Oversight: Patricia Albrecht, Assistant General Counsel, (202) 728-8026.

Background

As part of its effort to make the membership application process more efficient and less burdensome for applicants, NASD has amended Rule 1013 and Rule 1140 to require that member applicants, upon approval of their Web CRD entitlement request forms, file their Forms U4 electronically via Web CRD.

NASD Rule 1013 – New Member Application and Interview

Rule 1013(a)(2) (Contents) identifies the items an applicant must submit with its new membership application. The amendment to Rule 1013 eliminates Rule 1013(a)(2)(B), which currently requires an applicant to include in 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, Rule 1013(a)(3) (Electronic Filings), as amended, requires that upon approval of the applicant's Web CRD entitlement request form, the applicant must file all required Forms U4 electronically via Web CRD. The electronic filing requirement allows an applicant to use one unified process for all Form U4 submissions in the membership application process, reduces the amount of paperwork the applicant must submit with its membership application, and eliminates the need for NASD staff 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. Because Rule 1013(a)(3) will require an applicant to file Forms U4 directly with Web CRD, NASD Web CRD staff will not experience any delays that might occur as a result of the routing process.

Process for Filing Electronic Forms U4

Rule 1013(a)(2)(R) requires an applicant to submit with its membership application a Web CRD entitlement request form. NASD Registration and Disclosure (RAD) will send the Web CRD entitlement request form to the applicant if it was not included in the application. Upon receipt of the completed Web CRD entitlement request form, RAD will, as appropriate, approve the form and provide the applicant with access to Web CRD.

Upon approval of the applicant's Web CRD entitlement request form, amended Rule 1013(a)(3) requires that the applicant submit electronically, among other things, Forms U4 for its proposed associated persons who are required to register under NASD rules. NASD expects an applicant to file Forms U4 for all proposed associated persons who are not yet registered with NASD within two weeks of receiving Web CRD access. Receiving such information within this two-week window will enable NASD staff to review the person's background information at an early stage in the application process.

In contrast, in the case of proposed associated persons who are already registered with NASD at the time the applicant submits its membership application (and thus for whom NASD already possesses significant background information), the applicant may submit electronic Forms U4 for such persons at any time prior to the approval of the membership application; provided, however, that if a currently registered person needs

to take a qualifying examination, the applicant must file the registered person's Form U4 early enough in the process to allow the registered person to take the necessary examination in a timely manner. In this regard, Rule 1014(a) (Standards for Admission) requires all associated persons to have the applicable licenses and registrations.² NASD's current policy allows each individual a 90-day window to pass all required examinations following the filing of an electronic Form U4.³

NASD Rule 1140 – Electronic Filing Rules

In connection with the new electronic Form U4 filing requirement, NASD also has amended Rule 1140. Rule 1140, as amended, subjects applicants to the same electronic filing requirements that members must follow when filing electronic Forms U4. Rule 1140 requires every electronic Form U4 filing made by a member to be based on a signed Form U4 provided by the associated person. In addition, Rule 1140 requires members, as part of their recordkeeping requirements, to retain the signed Forms U4 and make them promptly available upon regulatory request. Rule 1140, as amended, requires applicants to follow these same procedures when making electronic Form U4 filings. Among other things, these requirements will help ensure that each associated person has reviewed and confirmed the information set forth in the electronic Form U4, and has undertaken all related representations in the Form U4.

Technical Changes to NASD Rules 1013 and 1140

Finally, the amendments to Rules 1013 and 1140 make several technical changes, including:

- ♦ The references in these rules to "Form U-4" and "Form U-5" have been changed to "Form U4" and "Form U5," respectively.⁴
- ♦ Rule 1140 has been amended to replace references to "applicant" in Rule 1140 with references, as appropriate, to persons on whose behalf Forms U4 filings are being made.

Endnotes

1 SR-NASD-2003-136 (August 28, 2003); SEC Release No. 34-48448 (September 4, 2003); 68 FR 53626 (September 11, 2003).

2 Rule 1014(a)(2).

3 See NASD's "How to Become a Member" Web Page at www.nasdr.com/4700_toc.htm.

4 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." See SEC Release No. 34-48161 (July 10, 2003), 68 FR 42444 (July 17, 2003).

ATTACHMENT A

Questions and Answers Regarding Compliance With Amended NASD Rules 1013 and 1140

- Q: Are the paper Forms U4 filed by applicants being replaced entirely by electronic Form U4 filings?**
- A:** Yes. The requirement in Rule 1013(a)(2)(B) that a membership applicant must file signed, paper Forms U4 has been eliminated. Rule 1013(a)(3) has been amended to require that, upon approval of a membership applicant's Web CRD entitlement request form, the applicant must file Forms U4 electronically via Web CRD.
- Q: Is the electronic Form U4 based on a signed, paper Form U4?**
- A:** Yes, the electronic Form U4 is based on a signed, paper Form U4. Rule 1140(c) clarifies that all Forms U4 filed electronically must be based on a signed Form U4 that is provided to the member or an applicant for membership by the person.
- Q: Who will retain the signed Form U4 and how will NASD obtain a copy if it needs it?**
- A:** NASD Rule 1140 requires the member to retain the signed Form U4 and make it available promptly upon regulatory request.
- Q: How does an applicant comply with amended Rule 1013(a)(3)?**
- ▶ If a person who is not yet registered with NASD wants to become a registered person of the applicant, the applicant must, within two weeks of receiving Web CRD access, electronically file the Form U4 for such person. Receiving such information within this two-week window will enable NASD staff to review the person's background information at an early stage in the application process.
 - ▶ If a person who is already registered with an NASD member (and thus for whom NASD already possesses significant background information) wants to become a registered person of the applicant, the applicant may submit electronic Forms U4 for such person at any time prior to the approval of the membership application; provided, however, that if a currently registered person needs to take a qualifying examination, the applicant must file the registered person's Form U4 early enough in the process to allow the registered person to take the necessary examination in a timely manner.

ATTACHMENT B

1000. Membership, Registration and Qualification Requirements

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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).

[(l)] (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.

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(4) through (7) No change.

(b) No change.

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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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