

# Notice to Members

JUNE 2006

## SUGGESTED ROUTING

Legal and Compliance  
Operations  
Senior Management

## KEY TOPICS

Extension of Time Requests  
Fees  
Regulation T  
Schedule A to NASD By-Laws  
SEC Rule 15c3-3

## GUIDANCE

### Fee Increase for Extension of Time Requests

Amendments to the Fee for Extension of Time Requests under Regulation T and SEC Rule 15c3-3;  
**Effective Date: July 1, 2006**

#### Executive Summary

On May 15, 2006, NASD filed with the Securities and Exchange Commission (SEC) for immediate effectiveness a rule change to amend Section 8 of Schedule A to NASD's By-Laws to increase the service charge for processing extension requests to \$4 per request.<sup>1</sup>

Schedule A to NASD's By-Laws, as amended, is set forth in Attachment A of this Notice. The revised fee will be implemented on July 1, 2006.

#### Questions/Further Information

Questions regarding this Notice may be directed to Susan M. DeMando, Associate Vice President, Financial Operations, at (202) 728-8411; or Kathryn M. Moore, Assistant General Counsel, Office of General Counsel, Regulatory Policy and Oversight, at (202) 974-2974.

#### Background and Discussion

Regulation T, issued by the Board of Governors of the Federal Reserve System (FRB) pursuant to the Securities Exchange Act of 1934 (Exchange Act), among other things, governs the extension of credit to customers by broker-dealers for purchasing securities.<sup>2</sup> Rule 15c3-3 under the Exchange Act governs, among other things, the time period in which customer sell orders must be completed.<sup>3</sup> Under SEC Rule 15c3-3(n), a self-regulatory organization (SRO) may grant a broker-dealer an extension of time for delivery on sales of securities if: (1) it is satisfied that the broker-dealer is acting in good faith in making the request; and (2) exceptional circumstances warrant such action. Regulation T has a similar standard to allow an extension of time for payment for purchases of securities.<sup>4</sup>

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NASD has amended Section 8 of Schedule A to NASD's By-Laws to increase the service charge for processing each extension of time request pursuant to the provisions of Regulation T and SEC Rule 15c3-3 from \$2 (or \$1 in the case of electronically filed extension of time requests) to \$4 for all manually or electronically filed extension of time requests.<sup>5</sup> NASD believes that the proposed fees align with the actual costs associated with reviewing, processing, recording and responding to such requests.<sup>6</sup>

The revised fee will be implemented on July 1, 2006.

## Endnotes

- 1 See SR-NASD-2006-063 and Amendment No. 1 filed on May 25, 2006. Under Section 19(b) of the Securities Exchange Act of 1934, the SEC has the authority to summarily abrogate this type of rule change within 60 days of filing.
- 2 12 CFR 220.4(c) and 220.8(d). Regulation T generally requires that customers with a cash account pay for securities within five business days of purchase; for customers with a margin account, there must be sufficient minimum margin (typically 50%) to support the purchase.
- 3 17 CFR 240.15c3-3. In particular, SEC Rule 15c3-3(m) requires a broker-dealer that executes a customer sell order to obtain possession of the securities within ten business days of the settlement date or to close the transaction by purchasing the securities.
- 4 Under Regulation T, a firm's examining authority may grant an extension unless the examining authority believes that the broker-dealer is not acting in good faith or that the broker-dealer has not sufficiently determined that exceptional circumstances warrant such action.
- 5 NASD also has filed a proposed rule change with the SEC to adopt new NASD Rule 3160 to require (1) all clearing firm members for which NASD is the designated examining authority (DEA) pursuant to Rule 17d-1 under the Exchange Act to submit to NASD requests for extensions of time pursuant to the provisions of Regulation T and SEC Rule 15c3-3; and (2) each clearing firm member for which NASD is the DEA to file a monthly report with NASD indicating all broker-dealers for which it clears that have overall ratios of requested extensions of time to total transactions for the month that exceed a percentage specified by NASD. See SR-NASD-2006-064.
- 6 The New York Stock Exchange (NYSE) similarly increased the fee it charges its members for extensions of time requests to \$4 per extension. See Exchange Act Release No. 53235 (Feb. 6, 2006), 71 FR 7820 (Feb. 14, 2006) (SR-NYSE-2005-92) (SEC Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No.1 Thereto Relating to Increasing Certain Fees Charged by the NYSE to Its Members and Member Organizations).

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## ATTACHMENT A

New language is underlined; deletions are in brackets.

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### SCHEDULE A TO NASD BY-LAWS

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#### Section 8 - Service Charge for Processing Extension of Time Requests

(a) No Change.

(b) The service charge for processing each initial extension of time request and for all subsequent extension of time requests (1) involving the same transaction under Regulation T and/or (2) involving an extension of time previously granted pursuant to SEC Rule 15c3-3(n) shall be [~~\$2.00~~; provided, however, that the service charge shall be \$1.00 for extension of time requests filed electronically by members using NASD's Automated Regulatory Reporting System]\$4.00 per request.