

Notice to Members

NOVEMBER 2006

SUGGESTED ROUTING

Legal & Compliance
Operations
Senior Management

KEY TOPICS

Electronic Filing Requirements
NASD Rule 3170

ACTION REQUIRED

Electronic Filing Requirements

SEC Approves Rule 3170 Requiring Members to Electronically File with or Otherwise Submit to NASD Specified Regulatory Notices or Other Documents; **Effective Date: December 6, 2006¹**

NASD Advises Firms That Certain Notices Required under the Securities Exchange Act of 1934 Must Be Filed Electronically Starting on January 1, 2007

Executive Summary

The Securities and Exchange Commission (SEC) has approved the adoption of NASD Rule 3170 (Mandatory Electronic Filing Requirements), which gives NASD the authority to require firms to file or submit electronically any regulatory notice or other document that a member is required to file with (or otherwise submit to) NASD.² **This Notice also advises firms that NASD will require certain notices required under the Securities Exchange Act of 1934 to be filed electronically starting on January 1, 2007.**

The effective date of this rule change is December 6, 2006. Included with this Notice is Attachment A, the text of Rule 3170.

Questions/Further Information

Questions concerning this Notice may be directed to Susan M. DeMando, Associate Vice President, Financial Operations, Department of Member Regulation, at (202) 728-8411.

Adoption of Mandatory Electronic Filing Requirements under Rule 3170

Rule 3170 gives NASD authority to require firms to file or submit electronically any regulatory notice or other document that a member is required to file with (or otherwise submit to) NASD. NASD will issue a *Notice to Members* and other member communications, as appropriate, to advise its members as to each regulatory notice or document that members will be required to file with or submit in electronic format to NASD, and the date on which electronic filing or submission for these notices or documents will be required. NASD will also specify the electronic format to be used. These communications will advise members that as of the specified date, electronic filing or submission of the specified regulatory notices or documents will be mandatory, and NASD will no longer accept facsimile or other non-electronic transmissions of these notices or documents.³

NASD Announces New Electronic Filing Requirements Starting on January 1, 2007

Starting on January 1, 2007, NASD will require members to file electronically certain notices required to be filed under the Securities Exchange Act of 1934 (Exchange Act) via an electronic, Internet-based receiving and processing system (System), using templates developed by NASD for each notice.⁴ NASD members can access the templates for these regulatory notices on NASD's Web site. All members that file FOCUS reports will have access to the System, which will be available to members on NASD's Web site as part of NASD's infrastructure for Web-based regulatory form filing.⁵

Starting on January 1, 2007, the following notices must be filed with NASD electronically:

- ◆ Rule 15c3-1(e) Withdrawals of equity capital
- ◆ Rule 15c3-3(i) Special Reserve Bank Account
- ◆ Rule 17a-4(f)(2)(i);
Rule 17a-4(f)(3)(vii) Electronic storage media⁶
- ◆ Rule 17a-5(f)(4) Replacement of accountant⁷
- ◆ Rule 17a-11(b) Net capital deficiency
- ◆ Rule 17a-11(c)(1) Aggregate indebtedness is in excess of 1200 percent of net capital
- ◆ Rule 17a-11(c)(2) Net capital is less than 5 percent of aggregate debit items
- ◆ Rule 17a-11(c)(3) Net capital is less than 120 percent of required minimum dollar amount
- ◆ Rule 17a-11(d) Failure to make and keep current books and records
- ◆ Rule 17a-11(e) Material inadequacy in accounting systems, internal controls, or practices and procedures

Endnotes

- 1 Although this rule change becomes effective on December 6, 2006, members are not required to file electronically the notices specified in this Notice until January 1, 2007.
- 2 See Exchange Act Release No. 54654 (Oct. 26, 2006) (Order Approving Proposed Rule Change to Require Members to File Regulatory Notices with NASD Electronically; File No. SR-NASD-2006-060) (SEC Approval Order).
- 3 The notices required by SEC Rules 17a-4(f)(2)(i) and 17a-4(f)(3)(vii) (electronic storage media) and the notice required by SEC Rule 17a-5(f)(4) (replacement of accountant) require PDF attachments. Accordingly, NASD's Web site will advise firms that do not have access to PDF to contact NASD staff for alternate filing instructions.
- 4 Electronic filing of these notices with NASD does not affect requirements in those rules to file notices with the SEC or other securities regulatory agencies.
- 5 Currently, NASD members use this infrastructure to report, among other things, data required by Rule 3070 (reporting requirements), Rule 3150 (reporting requirements for clearing firms), Rule 3360 (short interest reporting), FOCUS reports as required by Exchange Act Rule 17a-5, and extension requests under Regulation T of the Federal Reserve Board and Exchange Act Rule 15c3-3.
- 6 See *supra* note 3.
- 7 See *supra* note 3.

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ATTACHMENT A

3100. BOOKS AND RECORDS, AND FINANCIAL CONDITION

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3170. Mandatory Electronic Filing Requirements

Each member shall be required to file with NASD, or otherwise submit to NASD, in such electronic format as NASD may require, all regulatory notices or other documents required to be filed or otherwise submitted to NASD, as specified by NASD.

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