

July 18, 2001

Katherine A. England
Assistant Director
Division of Market Regulation
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-1001

Re: **File No. SR-NASD-2001-46**
Mandatory Electronic Filing of Public Offerings

Dear Ms. England:

Pursuant to Rule 19b-4, enclosed please find the above-numbered rule filing. Also enclosed is a 3-1/2" disk containing the rule filing in Microsoft Word 7.0 to facilitate production of the Federal Register release.

If you have any questions, please contact Joseph E. Price, Director, Corporate Financing Department, NASD Regulation, Inc., at (240) 386-4642; e-mail joseph.price@nasd.com. The fax number of the Corporate Financing Department is (240) 386-4654.

Very truly yours,

Thomas M. Selman, Senior Vice President
Investment Companies/Corporate Financing

Enclosures

SECURITIES AND EXCHANGE COMMISSION

Washington, D. C.

Form 19b-4

Proposed Rule Change

by

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

Pursuant to Rule 19b-4 under the
Securities Exchange Act of 1934

1. Text of Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) under the Securities Exchange Act of 1934 ("Act"), the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned subsidiary NASD Regulation, Inc. ("NASD Regulation"), is filing with the Securities and Exchange Commission ("SEC") a proposed rule change to Rule 2710 of the Conduct Rules of the NASD (the "Corporate Financing Rule" or "Rule") to require that members submit information on public offerings of securities to the Corporate Financing Department of the NASD Regulation ("Department") through an electronic filing system. Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

2710. Corporate Financing Rule - Underwriting Terms and Arrangements

(a) No Change

(b) Filing Requirements

(1) – (4) No Change

(5) Documents to be Filed

(A) The following documents relating to all proposed public offerings of securities that are required to be filed under subparagraph (b)(4) above shall be filed with the Association for review:

([A] i) [Five (5)] Three copies of the registration statement, offering circular, offering memorandum, notification of filing, notice of intention, application for conversion and/or any other document used to offer securities to the public;

([B]ii) Three [(3)] copies of any proposed underwriting agreement, agreement among underwriters, selected dealers agreement, agency agreement, purchase agreement, letter of intent, consulting agreement, partnership agreement, underwriter's warrant agreement, escrow agreement, and any other document which describes the underwriting or other arrangements in connection with or related to the distribution, and the terms and conditions relating thereto; and any other information or documents which may be material to or part of the said

arrangements, terms and conditions and which may have a bearing on the Association's review;

([C] ~~iii~~) [Five (5)] ~~Three~~ copies of each pre-and post-effective amendment to the registration statement or other offering document, one copy marked to show changes; and three (3) copies of any other amended document previously filed pursuant to subparagraphs ([A] i) and ([B] ~~ii~~) above, one copy marked to show changes; and

([D] ~~iv~~) Three [(3)] copies of the final registration statement declared effective by the Commission or equivalent final offering document and a list of the members of the underwriting syndicate, if not indicated therein, and one ~~(4)~~ copy of the executed form of the final underwriting documents and any other document submitted to the Association for review.

(B) All documents that are filed with the Commission through the Commission's Electronic Data Gathering and Retrieval System shall be treated as filed with the Association.

(6) Information Required to be Filed

(A) Any person filing documents [pursuant to subparagraph] that are required to be filed under paragraph (b)(4) above shall provide the following information with respect to the offering through the Association's electronic filing system:

- (i) an estimate of the maximum public offering price;
- (ii) an estimate of the maximum underwriting discount or commission; maximum reimbursement of underwriter's expenses, and underwriter's counsel's fees (except for reimbursement of "blue sky" fees); maximum financial consulting and/ or advisory fees to the underwriter and related persons; maximum finder's fees; and a statement of any other type and amount of compensation which may accrue to the underwriter and related persons;
- (iii) a statement of the association or affiliation with any member of any officer, director or security holder of the issuer in an initial public offering of equity securities, and with respect to any other offering provide such information with respect to any officer, director or security holder of five percent or more of any class of the issuer's securities, to include:
 - a. the identity of the person;
 - b. the identity of the member and whether such member is participating in any capacity in the public offering; and

c. the number of equity securities or the face value of debt securities owned by such person, the date such securities were acquired, and the price paid for such securities.

(iv) a statement addressing the factors in subparagraphs (c)(4)(C) and (D), where applicable;

(v) a detailed explanation of any other arrangement entered into during the 12-month period immediately preceding the filing of the offering, which arrangement provides for the receipt of any item of value and/or the transfer of any warrants, options, or other securities from the issuer to the underwriter and related persons; [and]

(vi) a detailed explanation and any documents related to the modification of any item of compensation subsequent to the review and approval of such compensation by the Association;¹ and

(vii) any other information required by the Association's electronic filing system.

(B) Any person filing documents pursuant to paragraph (b)(5) above shall [file with the Association written notice] notify the Association through its electronic filing system that the offering has been declared effective or approved by the Commission or other agency no later than one business day following such declaration or approval or that the offering has been withdrawn or abandoned within three business days following the withdrawal decision to abandon the offering.

* * *

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by the Board of Directors of NASD Regulation at its meeting on April 25, 2001, which authorized the filing of the rule change with the SEC. Counsel for The Nasdaq Stock Market and NASD Dispute Resolution have been provided an opportunity to consult with respect to the proposed rule change, pursuant to the Plan of Allocation and Delegation of Functions by the NASD to its Subsidiaries. The NASD Board of Governors had an

¹ Subparagraphs (i) – (vi) are proposed to be amended in SR-NASD-99-04, Amendment No. 5 filed with the SEC on January 31, 2001.

opportunity to review the proposed rule change at its meeting on April 26, 2001. No other action by the NASD is necessary for the filing of the proposed rule change. Section 1(a)(ii) of Article VII of the By-Laws permits the NASD Board of Governors to adopt amendments to NASD Rules without recourse to the membership for approval.

The NASD will publish a Notice To Members within 30 days of Commission approval announcing the Rule change and provide an effective date within 60 days of Commission approval.

Questions regarding this rule filing may be directed to Joseph E. Price, Director, Corporate Financing Department, at (240) 386-4642.

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

Background

The Corporate Financing Rule regulates the underwriting terms and arrangements of public offerings of securities. The Rule requires members to file multiple copies of documents such as registration statements and other supplemental information with the Corporate Financing Department for most public offerings.

The Department reviews the filings to ensure compliance with NASD Rules, including Rules 2710, 2720, and 2810.² These rules require underwriters and their counsel to submit specified documents to the Department, such as registration statements and other documents describing the underwriting and other arrangements relating to distributions. The Department receives thousands

² Rule 2720 regulates corporate public offerings of securities where a participating member may have a conflict of interest. Rule 2810 regulates public offerings of direct participation program securities.

of packages and letters each year in paper form from underwriters and their counsel. Before the Department deployed its electronic filing system, members and their counsel had to send these documents and information by regular mail, courier or fax.

In June 1999, the Department deployed the Corporate Offerings Business Regulatory Analysis System (“COBRA”) to permit members and their counsel to file information electronically with the Department and to permit the staff to access any documents filed with the SEC through the Electronic Data Gathering and Retrieval System (“EDGAR”). On April 30, 2001, the Department deployed a Web-based application of the COBRA system. The system consists of an internal software application used by the Department and “Web COBRADesk,” a user interface that permits members and their counsel to file offerings from their offices over the Internet.

Members’ use of the electronic filing system has greatly facilitated the Department’s review of filings. Filings made through Web COBRADesks automatically enter the Department’s database for review by the staff. By contrast, for paper filings, the staff must manually enter information into the COBRA system, which delays its review.

The Web COBRADesk eliminates the need for members to file registration statements with the Department if a registration statement already has been filed with the SEC using EDGAR. Filers simply provide the Department with an EDGAR accession number when they file the original registration statement, subsequent amendments, and final prospectus. COBRA allows the staff to link to each document for review. Using Web COBRADesk significantly reduces members’ printing and delivery expenses related to Corporate Financing review. In addition, the system provides each filer with a local electronic database of the information it has filed with the

Department. NASD Regulation District examiners, Enforcement staff and other internal users also can access the filing information as needed.

Since its implementation, COBRA has improved the efficiency of the review process for electronic filings, decreased review time, and reduced the amount of paper correspondence and documents that members must file with the Department. The system has operated as a faster and more efficient mechanism for communication between filers and NASD Regulation.

Description of Proposed Amendments

NASD Regulation is proposing to amend the Corporate Financing Rule to require members to file all public offerings subject to the filing requirements of the Rule with the Department through its electronic filing system. Specifically, NASD Regulation is proposing to amend the introduction to subparagraph (b)(6) to require that the information required by that subparagraph and any other information required under the Rule be filed with the Department using its electronic filing system. The obligation to file information electronically that is proposed in subparagraph (b)(6) would apply to all offerings subject to the Rule's filing requirements, regardless of whether the offering is exempt from registration with the SEC or is submitted confidentially to the SEC for review.

NASD Regulation also is proposing to adopt new subparagraph (b)(5)(B) to provide that all documents that are filed with the SEC through the EDGAR system shall be treated as filed with the Association. However, members will remain obligated to continue to submit multiple copies of any required documents in paper format if those documents are not filed with the SEC through EDGAR.

Implementation

NASD Regulation has hosted several training sessions to provide opportunities for members and their counsel to learn how to file offerings using COBRADesk. In addition, certain Department staff members are dedicated to assisting filers when they access and navigate the system. Prior to and following SEC approval of the proposed rule change, the Department will provide additional training sessions and provide continuing support and assistance to members and their counsel who have questions and are unfamiliar with the system.

The NASD will publish a Notice To Members within 30 days of Commission approval announcing the Rule change and provide an effective date within 60 days of Commission approval.

(b) Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that the Association's 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 NASD believes that the proposed rule change will facilitate the Association's review of public offerings of securities and assist the Association to maintain a confidential, nonpublic database of information related to such filings.

4. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation 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.

5. 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.

6. Extension of Time Period for Commission Action

NASD Regulation does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Exhibits

1. Completed notice of proposed rule change for publication in the Federal Register.

Pursuant to the requirements of the Securities Exchange Act of 1934, NASD Regulation has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

NASD REGULATION, INC.

BY: _____
Barbara Z. Sweeney, Secretary

Date: July 17, 2001

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-NASD-2001-)

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Electronic Filings With the Corporate Financing Department

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),³ and rule 19b-4 thereunder,⁴ notice is hereby given that on _____, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly-owned subsidiary NASD Regulation, Inc. ("NASD Regulation"), 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 Regulation. 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 Regulation is proposing to amend Rule 2710 of the Conduct Rules of the NASD ("Corporate Financing Rule" or "Rule") to require electronic filing of information with the Corporate Financing Department ("Department") with respect to offerings subject to Rules 2710, 2720, and 2810. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

³ 15 U.S.C. 78s(b)(1).

⁴ 17 CFR 240.19b-4.

2710. Corporate Financing Rule - Underwriting Terms and Arrangements

(a) No Change

(b) Filing Requirements

(1) – (4) No Change

(5) Documents to be Filed

(A) The following documents relating to all proposed public offerings of securities that are required to be filed under subparagraph (b)(4) above shall be filed with the Association for review:

([A] i) [Five (5)] Three copies of the registration statement, offering circular, offering memorandum, notification of filing, notice of intention, application for conversion and/or any other document used to offer securities to the public;

([B] ii) Three [(3)] copies of any proposed underwriting agreement, agreement among underwriters, selected dealers agreement, agency agreement, purchase agreement, letter of intent, consulting agreement, partnership agreement, underwriter's warrant agreement, escrow agreement, and any other document which describes the underwriting or other arrangements in connection with or related to the distribution, and the terms and conditions relating thereto; and any other information or documents which may be material to or part of the said arrangements, terms and conditions and which may have a bearing on the Association's review;

([C] iii) [Five (5)] Three copies of each pre-and post-effective amendment to the registration statement or other offering document, one copy marked to show changes; and three (3) copies of any other amended document previously filed pursuant to subparagraphs ([A] i) and ([B] ii) above, one copy marked to show changes; and

([D] iv) Three [(3)] copies of the final registration statement declared effective by the Commission or equivalent final offering document and a list of the members of the underwriting syndicate, if not indicated therein, and one ~~(4)~~ copy of the executed form of the final underwriting documents and any other document submitted to the Association for review.

(B) All documents that are filed with the Commission through the Commission's Electronic Data Gathering and Retrieval System shall be treated as filed with the Association.

(6) Information Required to be Filed

(A) Any person filing documents [pursuant to subparagraph] that are required to be filed under paragraph (b)(4) above shall provide the following information with respect to the offering through the Association's electronic filing system:

- (i) an estimate of the maximum public offering price;
- (ii) an estimate of the maximum underwriting discount or commission; maximum reimbursement of underwriter's expenses, and underwriter's counsel's fees (except for reimbursement of "blue sky" fees); maximum financial consulting and/ or advisory fees to the underwriter and related persons; maximum finder's fees; and a statement of any other type and amount of compensation which may accrue to the underwriter and related persons;
- (iii) a statement of the association or affiliation with any member of any officer, director or security holder of the issuer in an initial public offering of equity securities, and with respect to any other offering provide such information with respect to any officer, director or security holder of five percent or more of any class of the issuer's securities, to include:
 - a. the identity of the person;
 - b. the identity of the member and whether such member is participating in any capacity in the public offering; and
 - c. the number of equity securities or the face value of debt securities owned by such person, the date such securities were acquired, and the price paid for such securities.
- (iv) a statement addressing the factors in subparagraphs (c)(4)(C) and (D), where applicable;
- (v) a detailed explanation of any other arrangement entered into during the 12-month period immediately preceding the filing of the offering, which arrangement provides for the receipt of any item of value and/or the transfer of any warrants, options, or other securities from the issuer to the underwriter and related persons; [and]

(vi) a detailed explanation and any documents related to the modification of any item of compensation subsequent to the review and approval of such compensation by the Association;⁵ and

(vii) any other information required by the Association's electronic filing system.

(B) Any person filing documents pursuant to paragraph (b)(5) above shall [file with the Association written notice] notify the Association through its electronic filing system that the offering has been declared effective or approved by the Commission or other agency no later than one business day following such declaration or approval or that the offering has been withdrawn or abandoned within three business days following the withdrawal decision to abandon the offering.

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 Regulation 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 Regulation 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

Background

The Corporate Financing Rule regulates the underwriting terms and arrangements of public offerings of securities. The Rule requires members to file multiple copies of documents such as

⁵ Subparagraphs (i) – (vi) are proposed to be amended in SR-NASD-99-04, Amendment No. 5 filed with the SEC on January 31, 2001.

registration statements and other supplemental information with the Corporate Financing Department for most public offerings.

The Department reviews the filings to ensure compliance with NASD Rules, including Rules 2710, 2720, and 2810.⁶ These rules require underwriters and their counsel to submit specified documents to the Department, such as registration statements and other documents describing the underwriting and other arrangements relating to distributions. The Department receives thousands of packages and letters each year in paper form from underwriters and their counsel. Before the Department deployed its electronic filing system, members and their counsel had to send these documents and information by regular mail, courier or fax.

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⁶ Rule 2720 regulates corporate public offerings of securities where a participating member may have a conflict of interest. Rule 2810 regulates public offerings of direct participation program securities.

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Implementation

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The NASD will publish a Notice To Members within 30 days of Commission approval announcing the Rule change and providing an effective date within 60 days of Commission approval.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁷ which requires, among other things, that the Association's 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. NASD Regulation believes that the proposed rule change will facilitate the Association's review of public

⁷ 15 U.S.C. 78o-3.

offerings of securities and assist the Association to maintain a confidential, nonpublic database of information related to such filings.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation 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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. SOLICITATION OF COMMENTS

Interested persons are invited to submit written data, views, and arguments concerning the foregoing including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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 such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file No. SR-NASD-2001- and should be submitted by [insert date 21 days from the date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Jonathan G. Katz
Secretary

⁸ 17 CFR 200.30-3(a)(12).