

OMB APPROVAL

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. SR - 2006 - 060

Amendment No.

Proposed Rule Change by National Association of Securities Dealers

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

Initial ☒ Amendment ☐ Withdrawal ☐

Section 19(b)(2) ☒Section 19(b)(3)(A) ☐Section 19(b)(3)(B) ☐

Rule

☐ 19b-4(f)(1) ☐ 19b-4(f)(4)
☐ 19b-4(f)(2) ☐ 19b-4(f)(5)
☐ 19b-4(f)(3) ☐ 19b-4(f)(6)

Pilot ☐ Extension of Time Period
for Commission Action ☐ Date Expires

Exhibit 2 Sent As Paper Document
☐

Exhibit 3 Sent As Paper Document
☐

Description

Provide a brief description of the proposed rule change (limit 250 characters).

Adoption of Rule 3170 to require members to file or submit in such electronic format as NASD may require, all regulatory notices or documents as specified by NASD.

Contact Information

Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name Last Name
Title
E-mail
Telephone Fax

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date

By
(Name)

(Title)

NOTE: Clicking the button at right will digitally sign and lock
this form. A digital signature is as legally binding as a physical
signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFT website.

Form 19b-4 Information

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change

Add

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

Add

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Exhibit Sent As Paper Document

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”),¹ the National Association of Securities Dealers, Inc. (“NASD”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to adopt NASD Rule 3170 to require members 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. Below is the text of the proposed rule change. Proposed new language is underlined.

* * * * *

3100. BOOKS AND RECORDS, AND FINANCIAL CONDITION

* * * * *

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.

* * * * *

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

(a) The proposed rule change was approved by the Board of Directors of NASD Regulation, Inc. at its meeting on November 30, 2005, which authorized the filing of the

¹ 15 U.S.C. 78s(b)(1).

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 NASD to its Subsidiaries. The Board of Governors of NASD had an opportunity to review the proposed rule change at its meeting on December 1, 2005. No other action by NASD is necessary for the filing of the proposed rule change. Section 1(a)(ii) of Article VII of the NASD By-Laws permits the Board of Governors of NASD to adopt NASD Rules without recourse to the membership for approval.

NASD will announce the effective date of the proposed rule change in a Notice to Members to be published no later than 60 days following Commission approval. The effective date will be 30 days following publication of the Notice to Members announcing Commission approval.

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

(a) Purpose

The proposed rule change would give authority to NASD to require the electronic filing (or submission) of any regulatory notice or other document that a member is required to file with (or otherwise submit to) NASD. NASD may specify the electronic format to be used. The proposed rule change does not specify the particular regulatory notices or documents that NASD will require members to file electronically. Instead, NASD's proposed rule change would give NASD authority to require members to electronically file with (or otherwise submit to) NASD any specified regulatory notice or document.

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 or submit electronically to NASD and the date on which electronic filing or submission for these notices or documents will be required. These communications will also 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.

NASD notes that, upon approval of the proposed rule change, NASD, as a member's designated examining authority, examining authority, or regulatory authority that examines the firm as to financial responsibility, plans to require members to file electronically certain notices as required under the following Exchange Act rules:²

- 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 media
- Rule 17a-5(f)(4) – Replacement of accountant
- 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

²

NASD has requested guidance from the Commission concerning whether notices filed with NASD electronically would satisfy the requirements of these Exchange Act rules to provide notice to NASD as the member firm's designated examining authority. Electronic filing of notices with NASD does not affect requirements in

- 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

NASD members will be required to file these specified notices with NASD via an electronic, Internet-based receiving and processing system (“System”), using templates developed by NASD for each notice. All members that file FOCUS reports will have access to the System, which will be available to members on NASD’s Internet Web site as part of NASD’s infrastructure for Web-based regulatory form filing.³ NASD will advise its members that they can access the templates for these regulatory notices on NASD’s Internet Web site.

As noted in Item 2 of this filing, NASD will announce the effective date of the proposed rule change in a Notice to Members to be published no later than 60 days following Commission approval. The effective date will be 30 days following publication of the Notice to Members announcing Commission approval.

(b) Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of

those rules to file notices with the Commission or other securities regulatory agencies.

³ 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.

Section 15A(b)(6) of the Act,⁴ which requires, among other things, that NASD 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, in that the proposed rule change will permit the expeditious filing of specified required regulatory notices and other required submissions by requiring firms to file such reports and documents with NASD electronically.

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

NASD 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.

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 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

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

⁴ 15 U.S.C. 78o-3(b)(6).

Federal Register.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-NASD-2006-060)

Self-Regulatory Organizations: National Association of Securities Dealers, Inc.; Notice Of Filing Of Proposed Rule Change To Adopt NASD Rule 3170 To Require Members 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

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on , the National Association of Securities Dealers, Inc. (“NASD”) 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. 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 is proposing to adopt NASD Rule 3170 to require members 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. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

3100. BOOKS AND RECORDS, AND FINANCIAL CONDITION

* * * * *

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.

* * * * *

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 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 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

The proposed rule change would give authority to NASD to require the electronic filing (or submission) of any regulatory notice or other document that a member is required to file with (or otherwise submit to) NASD. NASD may specify the electronic format to be used. The proposed rule change does not specify the particular regulatory notices or documents that NASD will require members to file electronically. Instead, NASD's proposed rule change would give NASD authority to require members to

electronically file with (or otherwise submit to) NASD any specified regulatory notice or document.

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 or submit electronically to NASD and the date on which electronic filing or submission for these notices or documents will be required. These communications will also 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.

NASD notes that, upon approval of the proposed rule change, NASD, as a member's designated examining authority, examining authority, or regulatory authority that examines the firm as to financial responsibility, plans to require members to file electronically certain notices as required under the following Exchange Act rules:³

- 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 media
- Rule 17a-5(f)(4) – Replacement of accountant
- Rule 17a-11(b) – Net capital deficiency

³ NASD has requested guidance from the Commission concerning whether notices filed with NASD electronically would satisfy the requirements of these Exchange Act rules to provide notice to NASD as the member firm's designated examining authority. Electronic filing of notices with NASD does not affect requirements in those rules to file notices with the Commission or other securities regulatory agencies.

- 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

NASD members will be required to file these specified notices with NASD via an electronic, Internet-based receiving and processing system (“System”), using templates developed by NASD for each notice. All members that file FOCUS reports will have access to the System, which will be available to members on NASD’s Internet Web site as part of NASD’s infrastructure for Web-based regulatory form filing.⁴ NASD will advise its members that they can access the templates for these regulatory notices on NASD’s Internet Web site.

NASD will announce the effective date of the proposed rule change in a Notice to Members to be published no later than 60 days following Commission approval. The effective date will be 30 days following publication of the Notice to Members announcing Commission approval.

⁴ 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.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁵ which requires, among other things, that NASD 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, in that the proposed rule change will permit the expeditious filing of specified required regulatory notices and other required submissions by requiring firms to file such reports and documents with NASD electronically.

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

NASD 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.

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

⁵ 15 U.S.C. 78o-3(b)(6).

(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 proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASD-2006-060 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASD-2006-060. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 also will be available for inspection and copying at the principal office of NASD.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASD-2006-060 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁶

Nancy M. Morris

Secretary

⁶ 17 CFR 200.30-3(a)(12).