

Proposed Rule Change by National Association of Securities Dealers
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial <input checked="" type="checkbox"/>	Amendment <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) <input checked="" type="checkbox"/>	Section 19(b)(3)(A) <input type="checkbox"/>	Section 19(b)(3)(B) <input type="checkbox"/>
			Rule		
			<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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Description
Provide a brief description of the proposed rule change (limit 250 characters).

Amendment to Rule 11810(i) to mandate use of automated liability notification system of registered clearing firm

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	<input type="text" value="Shirley"/>	Last Name	<input type="text" value="Weiss"/>
Title	<input type="text" value="Associate General Counsel"/>		
E-mail	<input type="text" value="shirley.weiss@nasd.com"/>		
Telephone	<input type="text" value="(202) 728-8844"/>	Fax	<input type="text" value="(202) 728-8264"/>

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 officer.

Date	<input type="text" value="05/25/2007"/>
By	<input type="text" value="Patrice Gliniecki"/>
	(Name)
	<input type="text" value="Senior Vice President and Deputy General Counsel"/>
	(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 EFFS 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

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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

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Exhibit Sent As Paper Document

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

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”),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 amend NASD Rule 11810(i) to mandate the use of the automated liability notification system of a registered clearing agency when issuing liability notices in connection with certain securities transactions, provided both parties to the contract are participants in a registered clearing agency that has such an automated system. Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

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11000. UNIFORM PRACTICE CODE

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11800. CLOSE-OUT PROCEDURES

11810. Buying-In

(a) through (h) No change.

(i) Failure to Deliver and Liability Notice Procedures

¹ 15 U.S.C. 78s(b)(1).

(1) (A) If a contract is for warrants, rights, convertible securities or other securities which (i) have been called for redemption; (ii) are due to expire by their terms; (iii) are the subject of a tender or exchange offer; or (iv) are subject to other expiring events such as a record date for the underlying security and the last day on which the securities must be delivered or surrendered (the expiration date) is the settlement date of the contract or later the receiving member may deliver a Liability Notice to the delivering member as an alternative to the close-out procedures set forth in paragraphs (a) through (g). When the parties to a contract are both participants in a registered clearing agency that has an automated service for notifying a failing party of the liability that will be attendant to a failure to deliver, the transmission of the liability notice must be accomplished through the use of said automated notification service. When the parties to a contract are not both participants in a registered clearing agency that has an automated service for notifying a failing party of the liability that will be attendant to a failure to deliver, [S]such [N]notice must be issued using written or comparable electronic media having immediate receipt capabilities no later than one business day prior to the latest time and the date of the offer or other event in order to obtain the protection provided by this Rule.

(B) If the contract is for a deliverable instrument with an exercise provision and the exercise may be accomplished on a daily basis, and the

settlement date of the contract to purchase the instrument is on or before the requested exercise date, the receiving member may deliver a Liability Notice to the delivering member no later than 11:00 a.m. on the day the exercise is to be effected. Notice may be redelivered immediately to another member but no later than noon on the same day. When the parties to a contract are both participants in a registered clearing agency that has an automated service for notifying a failing party of the liability that will be attendant to a failure to deliver, the transmission of the liability notice must be accomplished through use of said automated notification service. When the parties to a contract are not both participants in a registered clearing agency that has an automated service for notifying a failing party of the liability that will be attendant to a failure to deliver, [S]such [N]notice must be issued using written or comparable electronic media having immediate receipt capabilities. If the contract remains undelivered at expiration, and has not been canceled by mutual consent, the receiving member shall notify the defaulting member of the exact amount of the liability on the next business day.

(C) No change.

(2) through (4) No change.

* * * * *

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by the Board of Directors of NASD Regulation, Inc. at its meeting on April 18, 2007, which authorized the filing of the rule change with the SEC. The Board of Governors of NASD had an opportunity to review the proposed rule change at its meeting on April 19, 2007. 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 amendments to 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

Rule 11810(i) sets forth the procedures that must be followed when a party is owed securities that have become the subject of a voluntary corporate action, such as a tender or exchange offer. Under Rule 11810(i), the owed party delivers a liability notice to the owing, or failing, counterparty. The liability notice sets a cut off date for the delivery of the securities by the counterparty, and provides notice to the counterparty that it will be held liable for any damages caused by the failure to deliver the securities in time for the owed party to participate in the voluntary corporate action.

If the owing party delivers the securities in response to the liability notice, it has met its delivery obligation. If the owing party fails to deliver the securities in sufficient time for the owed party to participate in the voluntary corporate action, it will be liable for any damages that may accrue thereby, i.e., in lieu of delivering the securities the owing party must deliver proceeds equivalent to participation in the offer as indicated on the notice of liability. The onus is on the owed party to communicate its intentions to the owing party and to prove that the owing party received the liability notice.

Rule 11810(i) currently requires firms to send liability notices via “electronic media having immediate receipt capabilities.” Although there is currently no one acceptable means for sending and tracking liability notices, NASD members have advised that it is industry practice to send liability notices via fax to the failing counterparty. Sending liability notices by fax is a manual, paper-intensive process that is subject to error. For example, the fax may be directed to the wrong department and not timely received by the correct department, or sent to the correct department but overlooked by the responsible person(s). In other cases, the receiver may not notify the sender that the fax has been received, and the sender must follow up with another fax and/or telephone call. The financial risk to an owing firm that misses or incorrectly processes a liability notice relating to a voluntary corporate action can be considerable, since the corporate action may involve hundreds of shareholders.

In response to industry need for a reliable and uniform method of transmitting liability notices, The Depository Trust Company (“DTC”) developed the SMART/Track for Corporate Action Liability Notification Service (“SMART/Track”), a web-based

system for the communication of liability notices that is currently available to all DTC participants. SMART/Track allows DTC participants and NSCC settling firms to create, send, process and track corporate action liability notices.² Transmitting liability notices through SMART/Track eliminates paper liability notices and provides firms with an electronic, centralized system that distributes, manages and controls liability notices. SMART/Track helps reduce the risks, costs and delays associated with missing or inaccurate information for a corporate action liability notification event. It also provides participants with (1) a more timely receipt and distribution of corporation action liability notifications; (2) a centralized system to manage and control all liability notifications on all issues; (3) immediate identification of the security affected by a corporate action liability notification; (4) detailed disclosure and clearer understanding of terms and conditions of the corporate action; and (5) an audit trail with a complete record of actions taken regarding a liability notice.

As proposed, NASD Rule 11810(i) will mandate the use of the automated liability notification system when the parties to a contract are both participants in a registered clearing agency that has an automated service for notifying a failing party of the liability that will be attendant to a failure to deliver. When either or both parties to a contract are not both participants in a registered clearing agency that has an automated service for issuing liability notices, Rule 11810(i) will continue to require the liability notice to be issued using written or comparable electronic media having immediate receipt capabilities.

² Currently, The Depository Trust Company (“DTC”) is the only registered

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 Section 15A(b)(6) of the Act,³ 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, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change is consistent with the provisions of the Act noted above in that SMART/Track will eliminate paper liability notices and provide firms with an electronic, centralized system to distribute, manage and control liability notices. In addition to reducing the risks, costs and delays associated with missing or inaccurate information for a corporate action liability notification event, SMART/ Track will identify the security affected by a corporate action liability notice, give firms detailed disclosure of the terms and conditions of the corporate action, enable firms to more timely receive and distribute

³ clearing agency operating an automated corporate liability notification service. 15 U.S.C. 78o-3(b)(6).

corporate action liability notices, and provide an audit trail with a complete record of actions taken regarding a liability notice.

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.⁴

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

The New York Stock Exchange LLC (“NYSE”) recently amended NYSE Rule 180 to mandate that when the parties to a contract are both participants in a registered clearing agency that has an automated service for notifying a failing party of the liability that will be attendant to a failure to deliver, the liability notice must be sent through that automated service.⁵

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 55132 (January 19, 2007), 72 FR 3896 (January 26, 2007) (File No. SR-NYSE-2006-57).

9. Exhibits

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

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-NASD-2007-035)

Self-Regulatory Organizations: National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change Amending NASD Rule 11810 to Mandate the Use of the Automated Liability Notification System of a Registered Clearing Agency

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 amend Rule 11810(i) to mandate the use of the automated liability notification system of a registered clearing agency when issuing liability notices in connection with certain securities transactions, provided both parties to the contract are participants in a registered clearing agency that has such an automated system. 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.

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11000. UNIFORM PRACTICE CODE

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11800. CLOSE-OUT PROCEDURES

11810. Buying-In

(a) through (h) No Change.

(i) Failure to Deliver and Liability Notice Procedures

(1) (A) If a contract is for warrants, rights, convertible securities or other securities which (i) have been called for redemption; (ii) are due to expire by their terms; (iii) are the subject of a tender or exchange offer; or (iv) are subject to other expiring events such as a record date for the underlying security and the last day on which the securities must be delivered or surrendered (the expiration date) is the settlement date of the contract or later the receiving member may deliver a Liability Notice to the delivering member as an alternative to the close-out procedures set forth in paragraphs (a) through (g). When the parties to a contract are both participants in a registered clearing agency that has an automated service for notifying a failing party of the liability that will be attendant to a failure to deliver, the transmission of the liability notice must be accomplished through the use of said automated notification service. When the parties to a contract are not both participants in a registered clearing agency that has an automated service for notifying a failing party

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[N]notice must be issued using written or comparable electronic media having immediate receipt capabilities no later than one business day prior to the latest time and the date of the offer or other event in order to obtain the protection provided by this Rule.

(B) If the contract is for a deliverable instrument with an exercise provision and the exercise may be accomplished on a daily basis, and the settlement date of the contract to purchase the instrument is on or before the requested exercise date, the receiving member may deliver a Liability Notice to the delivering member no later than 11:00 a.m. on the day the exercise is to be effected. Notice may be redelivered immediately to another member but no later than noon on the same day. When the parties to a contract are both participants in a registered clearing agency that has an automated service for notifying a failing party of the liability that will be attendant to a failure to deliver, the transmission of the liability notice must be accomplished through use of said automated notification service. When the parties to a contract are not both participants in a registered clearing agency that has an automated service for notifying a failing party of the liability that will be attendant to a failure to deliver, [S]such
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member shall notify the defaulting member of the exact amount of the liability on the next business day.

(C) No change.

(2) through (4) No change.

* * * * *

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

Rule 11810(i) sets forth the procedures that must be followed when a party is owed securities that have become the subject of a voluntary corporate action, such as a tender or exchange offer. Under Rule 11810(i), the owed party delivers a liability notice to the owing, or failing, counterparty. The liability notice sets a cut off date for the delivery of the securities by the counterparty, and provides notice to the counterparty that it will be held liable for any damages caused by the failure to deliver the securities in time for the owed party to participate in the voluntary corporate action.

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As proposed, NASD Rule 11810(i) will mandate the use of the automated liability notification system when the parties to a contract are both participants in a registered clearing agency that has an automated service for notifying a failing party of the liability that will be attendant to a failure to deliver. When either or both parties to a contract are not both participants in a registered clearing agency that has an automated service for issuing liability notices, Rule 11810(i) will continue to require the liability notice to be issued using written or comparable electronic media having immediate receipt capabilities.

³ Currently, The Depository Trust Company (“DTC”) is the only registered clearing agency operating an automated corporate liability notification service.

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.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of 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, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change is consistent with the provisions of the Act noted above in that SMART/Track will eliminate paper liability notices and provide firms with an electronic, centralized system to distribute, manage and control liability notices. In addition to reducing the risks, costs and delays associated with missing or inaccurate information for a corporate action liability notification event, SMART/Track will identify the security affected by a corporate action liability notice, give firms detailed disclosure of the terms and conditions of the corporate action, enable firms to more timely receive and distribute corporate

⁴ 15 U.S.C. 78o-3(b)(6).

action liability notices, and provide an audit trail with a complete record of actions taken regarding a liability notice.

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

(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-2007-035 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-2007-035. 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-2007-035 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.⁵

Nancy M. Morris

Secretary

⁵ 17 CFR 200.30-3(a)(12).