

Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Dated: April 25, 2005.

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 236, OMB Control No. 3235-0095, SEC File No. 270-118.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 236 under the Securities Act of 1933 ("Securities Act") requires issuers choosing to rely on an exemption from Securities Act registration for the issuance of fractional shares, scrip certificates or order forms, in connection with a stock dividend, stock split, reverse stock split, conversion, merger or similar transaction to furnish specified information to the Commission in writing at least ten days prior to the offering. The information is needed to provide public notice that an issuer is relying on the exemption. Public companies are the likely respondents. An estimated ten submissions are made pursuant to Rule 236 annually, resulting in an estimated annual total burden of 15 hours.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given

to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: April 25, 2005.

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51605; File No. SR-NASD-2005-004]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Annual Compliance Meetings

April 25, 2005.

On January 13, 2005, the National Association of Securities Dealers ("NASD") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² to clarify that the system that each member is required to establish and maintain to supervise the activities of registered representatives and associated persons also applies to registered principals. On March 1, 2005, NASD filed Amendment No. 1 to the proposed rule change.³ On March 9, 2005, NASD filed Amendment No. 2 to the proposed rule change.⁴ The proposed rule change, as amended, was published for comment in the **Federal Register** on March 21, 2005.⁵ The Commission received two comment letters on the proposal, as amended.⁶ On

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In Amendment No. 1, the NASD further clarified that the scope of NASD Rules 3010(a), 3010(a)(3), and 3010(b)(1), specifically extends to registered representatives and registered principals, as well as other associated persons.

⁴ In Amendment No. 2, the NASD filed a partial amendment to the proposed rule change to remove the underlining from the term "applicable NASD Rules" in NASD Rule 3010(a), as it is part of the existing rule text.

⁵ See Securities Exchange Act Release No. 51368 (March 14, 2005), 70 FR 13560 (March 21, 2005).

⁶ See letters from Jed Bandes, dated April 7, 2005 ("Bandes Letter") and William F. Marshall, President, First Winston Securities, Inc., dated April 11, 2005 ("First Winston Letter").

April 22, 2005, the NASD filed a response to the comment letters.⁷ This order approves the proposed rule change, as amended.

I. Description of Proposed Rule Change

NASD proposes to amend NASD Rule 3010(a)(7) to require that registered principals, in addition to registered representatives, attend an annual compliance meeting. NASD Rule 3010(a)(7) currently requires the attendance of registered representatives at annual compliance meetings, but it does not require the attendance of registered principals. NASD believes that registered principals also should be required to attend such meetings given the supervisory and compliance-related functions that principals perform and that the primary purpose of these meetings is to discuss compliance issues and keep registered persons current on changing compliance requirements or changes in the firm. Accordingly, NASD proposes to amend NASD Rule 3010(a)(7) to require that all registered principals, in addition to registered representatives, attend an annual compliance meeting in accordance with the Rule.

Further, although registered principals are included in the definition of associated person⁸ and thus are included in the scope of NASD Rule 3010(a), registered principals are not specifically listed in NASD Rule 3010(a). Therefore, NASD proposes a technical amendment to NASD Rule 3010(a) to clarify that each member is required to establish and maintain a system to supervise the activities of each registered representative, registered principal, and associated person.

NASD represents that the proposal clarifies that this provision applies to registered representatives and registered principals, as well as all other associated persons. To be consistent with this proposed amendment to NASD Rule 3010(a), NASD is proposing similar changes to NASD Rules 3010(a)(3) and 3010(b)(1) to clarify that the scope of these rules extends to registered representatives and registered principals, as well as other associated persons.⁹ NASD is also proposing to replace a reference to "Association" with "NASD" in the text of NASD Rule 3010(b)(1) to reflect the fact that NASD no longer refers to itself using its full

⁷ See letter to Katherine A. England, Assistant Director, Division of Market Regulation from Afshin Atabaki, Counsel, NASD, dated April 22, 2005 ("NASD Response Letter").

⁸ See NASD Rule 1011(b).

⁹ See Amendment No. 1, *supra* note 3.

corporate name, "Association," or "the NASD."

II. Summary of Comment and NASD's Response

The Commission received two comment letters on the proposed rule change that opposed the adoption of the proposal in its current form.¹⁰

Specifically, one commenter stated that the proposed rule change requiring principals to attend compliance meetings at the NASD was "bureaucratic excess and self indulgence" as well as difficult to comply with for handicapped individuals.¹¹ A second commenter stated that the NASD's proposal would "impose an undue hardship both in time and monetarily" for small firms.¹²

NASD responded by stating that the commenters mischaracterized the proposal. NASD explained that the proposal requires the attendance of registered principals (in addition to registered representatives) at annual compliance meetings that are conducted by their respective member firms, not the NASD. Furthermore, NASD responded to the commenters' concerns by noting that the rule itself states that members are provided with substantial flexibility in implementing the compliance meeting requirement. NASD further stated that the proposal expressly allows the compliance meeting to be conducted at a principal's place of business and outside of regular business hours. Additionally the meeting may be conducted by video conference, interactive classroom setting, telephone or other interactive means provided appropriate safeguards are in place.¹³

III. Discussion

The Commission has carefully reviewed the proposed rule change, the comment letters, and NASD's response and finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.¹⁴ In particular, the Commission finds that the proposed rule change, as amended, is consistent with Section 15A.¹⁵ Specifically, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act

because it is designed to promote just and equitable principals 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.¹⁶

The NASD's response to the comments adequately addresses the concerns raised. Moreover, the Commission believes that requiring registered principals to attend an interview or meeting at least annually at which relevant compliance matters are discussed will help to ensure that registered principals are current on new compliance requirements and changes at their firms.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁷ that the proposed rule change (SR-NASD-2005-004), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁸

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-51609; File No. SR-NASD-2005-013]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto To Create a Uniform Pricing Structure for the Nasdaq Market Center

April 26, 2005.

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 February 8, 2005, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in

Items I, II, and III below, which Items have been prepared by Nasdaq. On April 19, 2005, Nasdaq amended the proposed rule change.³ The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to establish a uniform schedule of fees for all market participants using the trade execution services of the Nasdaq Market Center. Nasdaq would implement the proposed rule change immediately upon approval by the Commission. The text of the proposed rule change, as amended, is available on Nasdaq's Web site (<http://www.nasdaq.com/about/LegalCompliance.stm>), at Nasdaq's principal office, and at the Commission's Public Reference Room.

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

In its filing with the Commission, Nasdaq 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. Nasdaq 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

Nasdaq is proposing the adoption of a uniform pricing and credit rebate structure applicable to all users of the Nasdaq Market Center. Under the proposal, all users of the Nasdaq Market Center would be charged the same tier-based per-share amounts for entering orders into the system, and all users would be entitled to the same tier-based levels of rebate credits based on the liquidity provided by those orders.⁴

To accomplish this, Nasdaq proposes to: (1) Eliminate the separate \$0.001 fee it currently imposes on market participants for non-directed or preferred orders that access the quote/orders of market participants that charge access fees for accessing their

¹⁰ See First Winston Letter and Bandes Letter.

¹¹ See Bandes Letter.

¹² See First Winston Letter.

¹³ See NASD Response Letter.

¹⁴ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁵ 15 U.S.C. 78o-3.

¹⁶ 15 U.S.C. 78o-3(b)(6).

¹⁷ 15 U.S.C. 78s(b)(2).

¹⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Amendment No. 1 (replacing and superseding the original filing in its entirety).

⁴ This same pricing structure also applies to Nasdaq's Brut facility.