

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54740; File No. SR-NASD-2006-073]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval To Amendment No. 2 To Amend NASD Interpretive Material 2210-4 To Require Certain Member Firms to Provide a Hyperlink to the NASD's Internet Home Page

November 9, 2006.

#### I. Introduction

On June 8, 2006, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> to amend NASD Interpretive Material 2210-4 to require certain member firms to provide a hyperlink to the NASD's internet home page. NASD filed Amendment No. 1 to the proposed rule change on June 26, 2006.<sup>3</sup> The proposed rule change, as amended, was published for comment in the **Federal Register** on July 6, 2006.<sup>4</sup> The Commission received three comments on the proposal, as amended.<sup>5</sup> On August 30, 2006, the NASD filed Amendment No. 2 to amend the filing and respond to the comment letters. This order grants accelerated approval of the proposed rule change, as amended by Amendment No. 2 and solicits comments from interested persons on Amendment No. 2.

#### II. Description of Proposed Rule Change

NASD proposes to amend NASD Interpretive Material ("IM") 2210-4 to require a member firm or a person associated with a member firm that refers, on its Internet Web site, to the firm's membership in NASD to provide

a hyperlink to NASD's Web site. According to the NASD, many broker-dealers refer to their membership in NASD on their internet Web sites, often in a description of the firm or in an "about us" section. The proposed rule change would require a firm, when referencing NASD membership on its Web site, to include an accompanying hyperlink to NASD's internet home page. The proposed rule change also would apply to an internet Web site relating to a firm's investment banking or securities business that is maintained by or on behalf of any person associated with the firm.<sup>6</sup> The proposed rule change would not create an independent obligation for a firm (or persons associated with a firm where applicable) to state that the firm is a NASD member on its internet Web site. The proposed rule change would apply only to the extent that a firm or a person associated with a firm chooses to represent on its Web site that the firm is a member of NASD.<sup>7</sup>

#### III. Summary of Comments and NASD Response

The Commission received three comment letters on the proposed rule change: two were generally in favor of the proposal in its current form; one stated the requirement constitutes "overkill."<sup>8</sup> Specifically, one commenter stated that the failure to define the term "most prominent" is likely to lead to differing interpretations and confusion.<sup>9</sup> A second commenter requested clarification regarding the extent of the requirement to include a hyperlink to the NASD's Internet home page.<sup>10</sup> They suggested that the language of the SIPC standard be used in the NASD interpretation in order to avoid confusion.<sup>11</sup> The commenter also expressed concern over the effective date for compliance, requesting that the time frame for compliance be increased from 180 days to 360 days due to the tremendous number of active Web sites

that will be affected by this requirement.<sup>12</sup>

In Amendment No. 2, NASD responded to the concerns raised by the commenters and amended the rule text. In response to the FSI Letter regarding the definition of the term "most prominent," NASD removed the requirement to place the hyperlink at the "most prominent indication of NASD membership." Instead, members will be allowed to place the hyperlink at any reference that is reasonably designed to draw the public's attention to NASD membership. With this change, NASD clarified that a firm subject to the proposed rule would be able to choose where to place a hyperlink to NASD's Web site, provided that the hyperlink is in close proximity to a reference to NASD membership that is reasonably designed to draw the public's attention to the fact that the firm is a member of NASD.

In response to the NPH Letter, NASD explained that "a legend that denotes that a firm is a member of NASD, would impose an obligation to provide a hyperlink." That stated, the NASD reaffirmed that a firm would only need to provide one hyperlink on its Web site.<sup>13</sup> Additionally, in response to the request in the NPH Letter for more time to implement the proposed rule change, the NASD stated that based on feedback it received from several member committees, the 180 days should provide sufficient time for implementation of the proposed rule change.

Finally, in response to the Lincoln Letter, NASD stated that the commenter appears to have misunderstood the requirements of the proposed rule change as a member would not be required to provide more than one hyperlink to the NASD's Web site.<sup>14</sup>

#### IV. Discussion and Commission Findings

The Commission has reviewed the proposed rule change, 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.<sup>15</sup> In particular, the Commission finds the proposed rule

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Amendment No. 1 replaced and superseded the original rule filing in its entirety.

<sup>4</sup> See Securities Exchange Act Release No. 54058 (June 28, 2006), 71 FR 38439 (SR-NASD-2006-073) ("Notice").

<sup>5</sup> See letters to Nancy M. Morris, Secretary, Commission, from Dale Brown, CEO, Financial Services Institute, dated July 27, 2006 ("FSI Letter") and from Aimee Blinder, Vice President, Compliance, National Planning Holdings, Inc., dated July 27, 2006 ("NPH Letter"). See letter filed via the Commission's Web Comment Form, from Phyllis Hawkins, Compliance Advisor, Lincoln Investment Planning, Inc., dated July 27, 2006 ("Lincoln Letter").

<sup>6</sup> This requirement is intended to capture, among other things, situations where a person associated with an NASD member firm maintains his own internet Web site or "home page" that relates to a member's investment banking or securities business. For example, NASD understands that independent contractors or their firms sometimes maintain a separate home page for each independent contractor for marketing purposes.

<sup>7</sup> The proposed rule change is similar to a rule adopted by the Securities Investor Protection Corporation ("SIPC"), which requires that its members provide a live hyperlink to SIPC's Web site, <http://www.SIPC.org>, when referring to membership in SIPC. See Article 11, Section 4 of SIPC Bylaws.

<sup>8</sup> See Lincoln letter.

<sup>9</sup> See FSI letter.

<sup>10</sup> See NPH letter.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> NASD stated that the hyperlink requirement would not apply to references to NASD membership in disclosure documents or other offering documents linked to the member firm's Web site.

<sup>14</sup> See footnote 5 in the Notice, *supra* note 4.

<sup>15</sup> In approving this proposed rule change the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

change, as amended, is consistent with Section 15A of the Act.<sup>16</sup> Specifically, the Commission finds the proposal to be consistent with the provisions of Sections 15A(b)(6) of the Act,<sup>17</sup> 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.

The Commission believes that the modifications to the proposed rule change that NASD made in response to issues raised by commenters should provide sufficient guidance to allow members to satisfy the requirements of the rule. Moreover, the Commission believes that facilitating investor access to NASD's Web site should lead to better educated and informed investors.

#### V. Solicitation of Comments Concerning Amendment No. 2

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, including whether Amendment No. 2 to 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2006-073 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-2006-073. 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 the filing also will be available for inspection and copying at the principal office of the 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-2006-073 and should be submitted on or before December 11, 2006.

#### VI. Accelerated Approval of Filing as Amended by Amendment No. 2

The Commission finds good cause for approving the filing, as modified by Amendment No. 2 to the proposed rule change, on an accelerated basis. Amendment No. 2 modifies the proposal in response to issues raised by the commenters. Because Amendment No. 2 raises no novel issues, and provides improvements to the proposed rule change in direct response to issues raised by the commenters, the Commission finds good cause for approving Amendment No. 2 before the 30th day after its publication in the *Federal Register*.

#### VII. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>18</sup> that the proposed rule change (SR-NASD-2006-073), as amended by Amendment No. 2, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>19</sup>

**Nancy M. Morris,**

*Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54737; File No. SR-NSCC-2006-10]

### Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Clarifying and Technical Changes to NSCC's Rules Regarding ACATS Fund/SERV

November 9, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on September 29, 2006, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by NSCC. NSCC filed the proposed rule change pursuant to Section 19(b)(3)(A)(i) of the Act<sup>2</sup> and Rule 19b-4(f)(1) thereunder<sup>3</sup> so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

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

The proposed rule change would make clarifying and technical changes to NSCC's Rules principally as they relate to funds which are eligible for processing on Fund/Serv, NSCC's mutual fund processing system.

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

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.<sup>4</sup>

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>3</sup> 17 CFR 240.19b-4(f)(1).

<sup>4</sup> The Commission has modified the text of the summaries prepared by NSCC.

<sup>16</sup> 15 U.S.C. 78o-3.

<sup>17</sup> 15 U.S.C. 78o-3(b)(6).

<sup>18</sup> 15 U.S.C. 78s(b)(2).

<sup>19</sup> 17 CFR 200.30-3(a)(12).