

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 the CBOE. 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-CBOE-2007-60 and should be submitted on or before July 5, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Nancy M. Morris,**  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55879; File No. SR-NASD-2007-036]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to a Technical Amendment to New NASD Rule 2342 (SIPC Information)

June 8, 2007

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> notice is hereby given that on June 1, 2007, 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. NASD

has filed the proposal as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon receipt of this filing by the Commission. 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 2342 (SIPC Information) to make a technical amendment to clarify the categories of members that are excepted from the scope of the rule. Below is the text of the proposed rule change.<sup>5</sup> Proposed new language is in italics; proposed deletions are in brackets.

\* \* \* \* \*

#### 2342. SIPC Information

All members, except those members: (a) That pursuant to Section 3(a)(2)(A)(i) through (iii) of the Securities Investor Protection Act of 1970 (SIPA) are excluded from membership in the Securities Investor Protection Corporation (SIPC) and that are not SIPC members; [and] or (b) whose business consists exclusively of the sale of investments that are ineligible for SIPC protection, shall advise all new customers, in writing, at the opening of an account, that they may obtain information about SIPC, including the SIPC brochure, by contacting SIPC, and also shall provide the Web site address and telephone number of SIPC. In addition, such members shall provide all customers with the same information, in writing, at least once each year. In cases where both an introducing firm and clearing firm service an account, the firms may assign these requirements to one of the firms.

\* \* \* \* \*

#### 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

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

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> The underlying rule text used in this proposed rule change is based on new NASD Rule 2342 which was approved by the SEC on May 10, 2007. See Securities Exchange Act Release No. 55737 (May 10, 2007), 72 FR 27606 (May 16, 2007) (Approval Order).

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

On May 10, 2006, the Commission approved new Rule 2342 (SIPC Information) to require NASD members, except those members (a) that pursuant to Section 3(a)(2)(A)(i) through (iii) of the Securities Investor Protection Act of 1970 ("SIPA") are excluded from membership in the Securities Investor Protection Corporation ("SIPC") and that are not SIPC members; or (b) whose business consists exclusively of the sale of investments that are ineligible for SIPC protection, to provide new customers, and all customers annually, with certain information about SIPC.<sup>6</sup> As approved, however, the rule text could be mistakenly read to except only those members that are excluded from membership in SIPC and are not SIPC members, and *also have* a business consisting exclusively of investment products that are ineligible for SIPC protection. Accordingly, NASD is filing this proposed rule change to delete the "and" between paragraphs (a) and (b) of new Rule 2342 and replace it with an "or" to clarify that the rule excepts from its requirements a member that meets the conditions in either paragraphs (a) or (b).

NASD has filed the proposed rule change for immediate effectiveness. The effective date of new Rule 2342, as amended by this proposed rule change, is November 6, 2007.

##### 2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>7</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. NASD believes that the proposed rule change is consistent with the protection of investors and the public interest in that it will avoid any confusion when reading the provisions of Rule 2342.

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

NASD does not believe that the proposed rule change will result in any

<sup>6</sup> See *supra* note 5.

<sup>7</sup> 15 U.S.C. 78o-3(b)(6).

<sup>7</sup> 17 CFR 200.30-3(a)(12).

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

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

burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.<sup>8</sup>

*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**

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)<sup>9</sup> of the Act and Rule 19b-4(f)(6) thereunder.<sup>10</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**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](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2007-036 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-2007-036. 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 the File Number SR-NASD-2007-036 and should be submitted on or before July 5, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

[FR Doc. E7-11441 Filed 6-13-07; 8:45 am]

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-55886; File No. SR-NASD-2007-027]

**Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to SEC Section 31-Related Fees**

June 8, 2007.

On April 17, 2007, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission"), 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> a proposal to allow member firms to voluntarily submit, within six months of the effective date of the proposal, funds previously accumulated by member firms to satisfy their, and subsequently NASD's, obligation to remit SEC Section 31-

related fees, to NASD. The proposed rule change was published for comment in the **Federal Register** on May 9, 2007.<sup>3</sup> The Commission received one comment letter regarding the proposal.<sup>4</sup> This order approves the proposed rule change.

Pursuant to Section 31 of the Act<sup>5</sup> and SEC Rule 31,<sup>6</sup> NASD and the national securities exchanges (collectively "SROs") are required to pay a transaction fee to the SEC that is designed to recover the costs related to the government's supervision and regulation of the securities markets and securities professionals. To offset this obligation, NASD assesses its clearing and self-clearing members a regulatory fee in accordance with Section 3 of Schedule A of the NASD By-Laws, which mirrors the SEC Section 31 fee in scope and amount. Clearing members may in turn seek to charge a fee to their customers or correspondent firms. Any allocation of the fee between a clearing member and its correspondent firm or customer is the responsibility of the clearing member.

NASD states that reconciling the amounts billed by NASD to member firms and the amounts collected by member firms from their customers historically has been difficult, causing surpluses to accumulate at some member firms (referred to as "accumulated funds"). These accumulated funds were not remitted to NASD, despite the fact that these charges may have been previously identified as "Section 31 Fees" or "SEC Fees" by certain firms.<sup>7</sup>

Prompted by a November 2004 Commission letter requesting an NASD analysis of and plan for addressing the accumulated funds issue, NASD surveyed 240 member clearing and self-

<sup>3</sup> Securities Exchange Act Release No. 55697 (May 2, 2007), 72 FR 26432 (May 9, 2007).

<sup>4</sup> See Letter from Mary Yeager, Assistant Secretary, New York Stock Exchange LLC ("NYSE") to Nancy M. Morris, Secretary, Commission, dated June 5, 2007 ("NYSE Comment").

<sup>5</sup> 15 U.S.C. 78ee.

<sup>6</sup> 17 CFR 240.31.

<sup>7</sup> NASD's rule also previously referred to this fee as an "SEC Transaction Fee." The SEC stated in its release adopting new Rule 31 and Rule 31T that "it is misleading to suggest that a customer or [self-regulatory organization] member incurs an obligation to the Commission under Section 31." Securities Exchange Act Release No. 49928 (June 28, 2004), 69 FR 41060, 41072 (July 7, 2004). In response to this statement, NASD amended its rule to refer to this fee as a "Regulatory Transaction Fee." See Securities Exchange Act Release No. 50274 (August 26, 2004), 69 FR 53757 (September 2, 2004) (SR-NASD-2004-129). Further, NASD issued guidance to ensure there is no confusion in the marketplace regarding NASD's "Regulatory Transaction Fee" and the "SEC's Section 31 Fee." See *Notice to Members* 05-11 (February 2005) and *Notice to Members* 04-63 (August 2004).

<sup>8</sup> 15 U.S.C. 78a.

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

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

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