

notice is hereby given that on April 29, 2003, the National Association of Securities Dealers, Inc. ("NASD") submitted to 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. On May 28, 2003, NASD submitted Amendment No. 1 to the proposed rule change.³ On July 9, 2003, NASD submitted Amendment No. 2 to the proposed rule change.⁴ NASD has designated the proposed rule change as concerned solely with administration of the self regulatory organization under Section 19(b)(3)(A)(iii) of the Act⁵ and Rule 19b-4(f)(3) thereunder,⁶ which renders the proposed rule change effective upon filing with the Commission.⁷ 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 NASD Rules to require members to submit requests for Underwriting Activity Reports ("UARs") to the Market Regulation Department rather than the Corporate Finance Department. NASD is also proposing to amend NASD Rule 0120 to change the definition of "NASD." The text of the proposed rule change is set forth below. Proposed new language is in *italics*; proposed deletions are in [brackets].

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³ See letter dated May 28, 2003, from Stephanie Dumont, Associate General Counsel, Office of General Counsel, Regulatory Policy and Oversight, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission ("Amendment No. 1"). In Amendment No. 1, NASD amended the proposal to redefine the term "NASD" in the proposed rule text and to revise and clarify its discussion of the purpose of the proposed rule change. The changes to the purpose section were subsequently amended by Amendment No. 2.

⁴ See letter dated July 7, 2003, from Stephanie Dumont, Associate General Counsel, Office of General Counsel, Regulatory Policy and Oversight, NASD, to Katherine A. England, Assistant Director, Division, Commission ("Amendment No. 2"). In Amendment No. 2, NASD amended the proposal to include additional amendments to the proposed rule text by, in part, deleting references to NASD Regulation, Inc., and to revise and clarify its discussion of the purpose of the proposed rule change.

⁵ 15 U.S.C. 78s(b)(3)(A)(iii).

⁶ 17 CFR 240.19b-4(f)(3).

⁷ For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on July 9, 2003, the date NASD filed Amendment No. 2. See 15 U.S.C. 78s(b)(3)(C).

0120. Definitions

When used in these Rules, unless the context otherwise requires:

(i) through (i) No Change.

(j) "NASD"

The term "NASD" means, *collectively*, *NASD Inc., NASD Regulation, Nasdaq, and NASD Dispute Resolution* [NASD, Inc].

(k) through (q) No Change.

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2710. Corporate Financing Rule—Underwriting Terms and Arrangements

(a) No Change.

(b) Filing Requirements

(1) General

No member or person associated with a member shall participate in any manner in any public offering of securities subject to this Rule, Rule 2720 or Rule 2810 unless documents and information as specified herein relating to the offering have been filed with and reviewed by *NASD* [the Association].

(2) Means of Filing

Documents or information required by this Rule to be filed with NASD [the Association][*] shall be considered to be filed only upon receipt by its Corporate Financing Department.*

(3) Confidential Treatment

NASD [The Association] shall accord confidential treatment to all documents and information filed pursuant to this Rule and shall utilize such documents and information solely for the purpose of review to determine compliance with the provisions of applicable *NASD* [Association] Rules or for other regulatory purposes deemed appropriate by *NASD* [the Association].

(4) Requirement for Filing

(A) Unless filed by the issuer, the managing underwriter, or another member, a member that anticipates participating in a public offering of securities subject to this Rule shall file with *NASD* [the Association] the documents and information with respect to the offering specified in subparagraphs (5) and (6) below no later than one business day after the filing of any of such documents:

(i) through (iv) No Change.

(B) No offering of securities subject to this Rule shall commence unless:

(i) The documents and information specified in subparagraphs (5) and (6) below have been filed with and reviewed by *NASD* [the Association]; and

(ii) *NASD* [the Association] has provided an opinion that it has no objections to the proposed underwriting and other terms and arrangements or an opinion that the proposed underwriting and other terms and arrangements are unfair and unreasonable. If *NASD's* [the Association's] opinion states that the proposed underwriting and other terms and arrangements are unfair and unreasonable, the member may file modifications to the proposed underwriting and other terms and arrangements for further review.

(C) Any member acting as a managing underwriter or in a similar capacity that has been informed of an opinion by *NASD* [the Association], or a determination by the appropriate standing committee of the Board of Governors, that the proposed underwriting terms and arrangements of a proposed offering are unfair or unreasonable, and the proposed terms and arrangements have not been modified to conform to the standards of fairness and reasonableness, shall notify all other members proposing to participate in the offering of that opinion or determination at a time sufficiently prior to the effective date of the offering or the commencement of sales so the other members will have an opportunity as a result of specific notice to comply with their obligation not to participate in any way in the distribution of a public offering containing arrangements, terms and conditions *that* [which] are unfair or unreasonable.

(5) Documents To Be Filed

(A) The following documents relating to all proposed public offerings of securities that are required to be filed under subparagraph (b)(4) above shall be filed with *NASD* [the Association] for review:

(i) No Change.

(ii) Three copies of any proposed underwriting agreement, agreement among underwriters, selected dealers agreement, agency agreement, purchase agreement, letter of intent, consulting agreement, partnership agreement, underwriter's warrant agreement, escrow agreement, and any other document *that* [which] describes the underwriting or other arrangements in connection with or related to the distribution, and the terms and conditions relating thereto; and any other information or documents *that* [which] may be material to or part of the said arrangements, terms and conditions and *that* [which] may have a bearing on *NASD's* [the Association's] review;

(iii) No Change.

* This Department is located at 9509 Key West Avenue, Rockville, Maryland 20850.