

In order to assist issuers that are in the listing review process comply with Nasdaq's corporate governance requirements, such issuers may contact Nasdaq staff to request any necessary corporate governance interpretations or financial viability waivers.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,⁶ in general and with section 15A(b)(6) of the Act,⁷ in particular, in that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices and, in general, to protect investors and the public interest. In particular, Nasdaq believes the proposed rule change will provide greater clarity and transparency for investors, issuers, and their counsel.

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

Nasdaq 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, as amended, is consistent with

the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609. 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 will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR-NASD-2003-23 and should be submitted by November 13, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48641; File No. SR-NASD-2003-148]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the NASD's Minor Rule Violation Plan and Late Fee Provision

October 16, 2003.

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 October 3, 2003, the National Association of Securities Dealers, Inc. ("NASD" or "Association") 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 the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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

The NASD is proposing to amend Interpretative Material 9216 (IM-9216) and Schedule A of the NASD By-Laws ("Schedule A") to clarify that a failure to timely file Schedule I, pursuant to Rule 17a-10 of the Act,³ is eligible for disposition under the NASD's Minor Rule Violation Plan ("MRVP" or "the Plan") and for assessment of a late fee. Below is the text of the proposed rule change. Proposed new language is *italicized*; proposed deletions are in brackets.

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Schedule A to the NASD By-Laws

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Section 4—Fees

(a)–(k) No Change.

(l) (1) Unless a specific temporary extension of time has been granted, there shall be imposed upon each member required to file reports, as designated by this paragraph, a fee of \$100 for each day that such report is not timely filed. The fee will be assessed for a period not to exceed 10 business days. Requests for such extension of time must be submitted to NASD at least three business days prior to the due date; and

(2) Any report filed pursuant to this Rule containing material inaccuracies or filed incompletely shall be deemed not to have been filed until a corrected copy of the report has been resubmitted.

(3) List of Designated Reports:

(A) SEC Rule 17a-5—Monthly and quarterly FOCUS reports and annual audit reports[.]; and

(B) *SEC Rule 17a-10—Schedule I.*

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9200. Disciplinary Proceedings

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IM-9216. Violations Appropriate for Disposition Under Plan Pursuant to SEC Rule 19d-1(c)(2)

—Rules 2210(b) and (c) and Rules 2220(b) and (c)—Failure to have advertisements and sales literature approved by a principal prior to use, failure to maintain separate files of advertisements and sales literature containing required information, and failure to file communications with NASD within the required time limits.

—Rule 3360—Failure to timely file reports of short positions on Form NS-1.

—Rule 3110—Failure to keep and preserve books, accounts, records,

³ 17 CFR 240.17a-10.

entitled to assume that listed securities meet its minimum listing requirements. See KLH Engineering Group, Inc., 52 S.E.C. 460 (1995); ORS Automation, Inc., 48 S.E.C. 490 (1986).

⁶ 15 U.S.C. 78o-3.

⁷ 15 U.S.C. 78o-3(b)(6).