

filed Amendment No. 1 to the proposed rule change.<sup>3</sup> NASD has designated the proposed rule change as “non-controversial” under section 19(b)(3)(A) of the Act<sup>4</sup> and Rule 19b-4(f)(6) thereunder,<sup>5</sup> which renders the proposed rule change effective upon filing with the Commission. 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**

NASD is proposing to amend NASD Rule 2710 to delete certain unnecessary rule language that was mistakenly proposed in amendments to Rule 2710 for which the Commission recently published notice of immediate effectiveness. The text of the proposed rule change, as amended, is set forth below. Proposed deletions are in [brackets].

\* \* \* \* \*

### **2710. Corporate Financing Rule—Underwriting Terms and Arrangements**

(a) No Change.

(b) Filing Requirements

(1) through (5) No Change.

(6) Information Required to be Filed

(A) Any person filing documents that are required to be filed under paragraph (b)(4) above shall provide the following information with respect to the offering through NASD’s electronic filing system:

(i) through (vi) No Change.

(vii) any other information required to be filed under this Rule [by NASD’s electronic filing system].

(B) No Change.

(7) through (11) No Change.

(c) through (d) No Change.

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### **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, as amended, 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. 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 July 30, 2003, the Commission published notice of the filing and immediate effectiveness of amendments by NASD to NASD Rules 2710 and 6540, both of which address the submission of requests for Underwriting Activity Reports (“UARs”).<sup>6</sup> This rule filing, however, inadvertently omitted the current language for NASD Rule 2710(b)(6)(A)(vii) because the rule text had not been properly updated by NASD to reflect a rule change previously approved by the Commission.<sup>7</sup> NASD represents that under the current rule language, the change to that provision proposed in File No. SR-NASD-2003-75 was unnecessary, and therefore, the purpose of the proposed rule change, as amended, is to delete the unnecessary rule language from NASD Rule 2710(b)(6)(A)(vii) that was mistakenly proposed in File No. SR-NASD-2003-75.

##### **2. Statutory Basis**

NASD believes that the proposed rule change, as amended, is consistent with the provisions of section 15A(b)(6) of the Act,<sup>8</sup> which requires, among other things, that NASD’s rules 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 deleting the language inserted into NASD Rule 2710(b)(6)(A)(vii) by File No. SR-NASD-2003-75 is consistent with the protection of investors and the public interest.

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

NASD believes that the proposed rule change, as amended, would not 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**

Because the foregoing proposed rule change, as amended, 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) of the Act<sup>9</sup> 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.<sup>11</sup>

NASD has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The proposed rule change, as amended, is technical in nature and acceleration of the operative date will allow NASD to make the technical correction to NASD Rule 2710 with immediate effect. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.<sup>12</sup>

### **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

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

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

<sup>11</sup> For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, under section 19(b)(3)(C) of the Act, the Commission considers the period to commence on October 16, 2003, the date NASD filed Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

<sup>12</sup> For purposes only of accelerating the operative date of the proposed rule change, as amended, the Commission considered the proposed rule’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>3</sup> See letter from Barbara Z. Sweeney, Senior Vice President and Corporate Secretary, NASD to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated October 15, 2003 (“Amendment No. 1”). In Amendment No. 1, NASD amended the proposed rule change to correct the proposed rule text and to revise the discussion of the purpose of the proposed rule change.

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>5</sup> 17 CFR 240.19b-4(f)(6).

<sup>6</sup> See Securities Exchange Act Release No. 48215 (July 23, 2003), 68 FR 44826 (July 30, 2003) (File No. SR-NASD-2003-75).

<sup>7</sup> See Securities Exchange Act Release No. 45709 (Apr. 9, 2002), 67 FR 18282 (Apr. 15, 2002) (File No. SR-NASD-2001-46).

<sup>8</sup> 15 U.S.C. 78o-3(b)(6).