

3, 2002, April 14, 2003, April 29, 2003, and June 2, 2003, respectively. This order issues notice of, and grants accelerated approval to, the filing as modified by Amendment Nos. 6, 7, 8, 9, and 10.

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

In response to comments to Amendment No. 5, NASD is proposing additional amendments to Rules 2710 and 2720 of the NASD's Conduct Rules. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets. The text of the proposed rule change is marked to show additions and deletions from the NASD Corporate Financing Rule as it currently exists. The discussion section of this notice, however, focuses on the changes made in Amendment Nos. 6 through 10. For an explanation of the original filing, see the initial notice cited in footnote 6.

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2710. Corporate Financing Rule—Underwriting Terms and Arrangements

(a) Definitions

For purposes of this Rule, the following terms shall have the meanings stated below. The definitions in Rule 2720 are incorporated herein by reference.

(1) Issuer

The issuer of the securities offered to the public, any selling security holders offering securities to the public, any affiliate of the issuer or selling security holder, and the officers or general partners, directors, employees and security holders thereof[;].

(2) Net Offering Proceeds

Offering proceeds less all expenses of issuance and distribution[;].

that a derivative instrument or other security received for acting as a private placement agent for the issuer for providing or arranging a loan, credit facility, merger, acquisition, or any other service, is not included within the definition of "fair price." Second, Amendment No. 10 adds subsection (a)(10) to Rule 2710, regarding required filing dates. Third, Amendment No. 10 adds the following language to proposed Rule 2710(b)(6)(A)(iv)(b): "provided, however, that information filed in connection with debt securities and derivative instruments acquired or entered into for a "fair price" as defined in subsection (a)(9) may be limited as described in subsection (b)(6)(A)(iv)b." Fourth, Amendment No. 10 adds the following language to the beginning of the first sentence of proposed Rule 2710(g): "In any public equity offering, other than a public equity offering by an issuer that can meet the requirements in subparagraphs (b)(7)(C)(i) or (ii), any * * *." Fifth, Amendment No. 10 adds new subparagraph (e)(5) to Rule 2710, regarding valuation of items of value acquired in connection with a fair price derivative or debt transaction.

(3) Offering Proceeds

Public offering price of all securities offered to the public, not including securities subject to any overallotment option, securities to be received by the underwriter and related persons, or securities underlying other securities[;].

(4) Participating Member(s)

Any NASD member that is participating in a public offering, any associated person of the member, any members of their immediate family, and any affiliate of the member.

[(4)](5) Participation or Participating in a Public Offering

Participation in the preparation of the offering or other documents, participation in the distribution of the offering on an underwritten, non-underwritten, or any other basis, furnishing of customer and/or broker lists for solicitation, or participation in any advisory or consulting capacity to the issuer related to the offering, but not the preparation of an appraisal in a savings and loan conversion or a bank offering or the preparation of a fairness opinion pursuant to SEC Rule 13e-3[; and].

[(5)](6) Underwriter and Related Persons

[Includes underwriters,] *Consists of* underwriter's counsel, financial consultants and advisors, finders, [members of the selling or distribution group,] any *participating member* [participating in the public offering], and any [and all] other persons [associated with or] related to any *participating member* [and members of the immediate family of any of the aforementioned persons].

(7) Listed Securities

Securities meeting the listing standards to trade on the national securities exchanges identified in SEC Rule 146, markets registered with the SEC under Section 6 of the Exchange Act, and any offshore market that is a "designated offshore securities market" under Rule 902(b) of SEC Regulation S.

(8) Derivative Instruments

A derivative instrument is any "eligible OTC derivative instrument" as defined in SEC Rule 3b-13(a)(1), (2) and (3).

(9) Fair Price

A derivative instrument or non-convertible or non-exchangeable debt security has been acquired or entered into at a fair price for purposes of subparagraphs (b)(6)(A)(iv), (c)(3)(B)(vi) and (vii), and (e)(5) if the underwriters and related persons have priced the

debt security or derivative instrument in good faith; on an arm's length, commercially reasonable basis; and in accordance with pricing methods and models and procedures used in the ordinary course of their business for pricing similar transactions. A derivative instrument or other security received for acting as a private placement agent for the issuer, for providing or arranging a loan, credit facility, merger, acquisition or any other service, including underwriting services, is not included within this "fair price" definition.

(10) Required Filing Date

The required filing date shall be the dates provided in subparagraph (b)(4), and for a public offering exempt from filing under subparagraph (b)(7), the required filing date for purposes of subparagraph (d) and (g) shall be the date the public offering would have been required to be filed with the NASD but for the exemption.

(b) Filing Requirements

(1)–(3) No change.

(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 [the Association] NASD the documents and information with respect to the offering specified in subparagraphs (5) and (6) below:

(i) no later than one business day after [the filing of] any such documents *are filed with or submitted to:*

[(i)]a. [with] the Commission; or

[(ii)]b. [with the] any state securities commission or other regulatory authority; or

[(iii)] with any other regulatory authority; or]

[(iv)](ii) if not filed with or submitted to any regulatory authority, at least fifteen [(15)] business days prior to the anticipated [offering] date on which offers will commence.

(B) No [offering] sales 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 [the Association] NASD; and

(ii) No change.

(C) No change.

(5) No change.

(6) Information Required To Be Filed

(A) Any person filing documents with the NASD that are required to be filed