

requirement will allow the pilot to continue uninterrupted through April 15, 2002, the deadline by which self-regulatory organizations must file proposed rule changes to set the minimum price variation for quoting in a decimals environment. For these reasons, the Commission finds good cause to designate that the proposal is both effective and operative upon filing with the Commission.<sup>11</sup>

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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 CHX. All submissions should refer to File No. SR-CHX-2002-01 and should be submitted by March 27, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 02-5271 Filed 3-5-02; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-45483; File No. SR-NASD-2002-11]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Amendments to NASD Rule 2260 To Require the Forwarding of Issuer and Trustee Communications to Beneficial Holders of Debt Securities

February 27, 2002.

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 January 17, 2002, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned subsidiary, NASD Regulation, Inc. ("NASD Regulation") 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.

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

NASD Regulation is proposing to amend Rule 2260 of the rules of the NASD to require a broker-dealer to make reasonable efforts to forward a communication from an issuer or trustee regarding a debt security to the beneficial owner of such security. The proposed rule change would also clarify IM-2260 (Suggested Rate of Reimbursement) to reflect that, in forwarding proxies and other materials, members may not charge for envelopes that are provided by the issuer or the trustee, as well as by persons soliciting proxies.

Below is the text of the proposed rule change.<sup>3</sup> Proposed new language is in

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

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

<sup>3</sup> In addition to the proposed changes to Rule 2260 set forth below, in 1999 the NASD proposed to amend Rule 2260 to allow NASD members to give proxies in the absence of written instructions from beneficial owners of securities. See SR-NASD-99-63 and Amendment No. 1 thereto, filed, respectively, on October 21, 1999, and November 10, 1999. Although the proposed change was published for notice and comment, SR-NASD-99-63 remains pending before the Commission. See Securities Exchange Act Release No. 42238 (December 15, 1999), 64 FR 71836 (December 22, 1999) (notice of filing of proposed rule change). The rule change proposed herein is based on the current text of Rule 2260, rather than on the amendments proposed in SR-NASD-99-63. The NASD

*italics*; proposed deletions are in brackets.

\* \* \* \* \*

#### 2260. Forwarding of Proxy and Other Materials

(a) A member has an inherent duty [in carrying out high standards of commercial honor and just and equitable principles of trade] to forward *promptly certain information regarding a security to the beneficial owner (or the beneficial owner's designated investment adviser) if the member carries the account in which the security is held for the beneficial owner and the security is registered in a name other than the name of the beneficial owner.*

##### (1) Equity Securities

For an equity security, the member must forward:

(A)[(1)]all proxy material [which] *that* is properly furnished to *the member* [it] by the issuer of the securities or a stockholder of such issuer;[to each beneficial owner of shares of that issue (or the beneficial owner's designated investment adviser) which are held by the member for the beneficial owner thereof] and

(B)[(2)]all annual reports, information statements and other materials sent to stockholders[, which] *that* are properly furnished to *the member*[it] by the issuer of the securities. [to each beneficial owner of shares of that issue (or the beneficial owner's designated investment adviser) which are held by the member for the beneficial owner thereof.]

##### (2) Debt Securities

*For a debt security other than a municipal security, the member must make reasonable efforts to forward any communication, document, or collection of documents pertaining to the issue that: (A) was prepared by or on behalf of, the issuer, or was prepared by or on behalf of, the trustee of the specific issue of the security; and (B) contains material information about such issue including, but not limited to, notices concerning monetary or technical defaults, financial reports, information statements, and material event notices.*

(b) No member shall give a proxy to vote stock [which] *that* is registered in its name, except as required or permitted under the provisions of paragraphs (c) or (d) hereof, unless such member is the beneficial owner of such stock.

represents that, if necessary, it will amend SR-NASD-99-63 to conform the rule text therein to the rule text proposed in this rule filing.

<sup>11</sup> For purposes only of waiving the 5-day pre-filing requirement and accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

(c)—(1) No change.

(A) sufficient copies of all soliciting material [which] that such person is sending to registered holders, and

(B) satisfactory assurance that he or she will reimburse such member for all out-of-pocket expenses, including reasonable clerical expenses incurred by such member in connection with such solicitation,

such member shall transmit promptly to each beneficial owner of stock of such issuer (or the beneficial owner's designated investment adviser) [which] that is in its possession or control and registered in a name other than the name of the beneficial owner, all such material furnished. Such material shall include a signed proxy indicating the number of shares held for such beneficial owner and bearing a symbol identifying the proxy with proxy records maintained by the member, and a letter informing the beneficial owner (or the beneficial owner's designated investment adviser) of the time limit and necessity for completing the proxy form and forwarding it to the person soliciting proxies prior to the expiration of the time limit in order for the shares to be represented at the meeting. A member shall furnish a copy of the symbols to the person soliciting the proxies and shall also retain a copy thereof pursuant to the provisions of SEC Rule 17a-4 [under the Act].

(2) through (3) No change.

(d)—(1) No change.

(1) A member [which] that has in its possession or within its control stock registered in the name of another member and [which] that desires to transmit signed proxies pursuant to the provisions of paragraph (c), shall obtain the requisite number of signed proxies from such holder of record.

(3) No change.

(A) No change.

(B) any *designated investment adviser* [person registered as an investment adviser under the Investment Advisers Act of 1940 who exercises investment discretion pursuant to an advisory contract for the beneficial owner to vote the proxies for stock which is in the possession or control of the member,] may vote such proxies.

(e)—(1) *As required in paragraph (a),* a [A] member [when so requested by an issuer and upon being furnished with:] *must forward promptly the material set forth in (a)(1), in connection with an equity security, or must make reasonable efforts to forward promptly the material set forth in (a)(2), in connection with a debt security, provided that the member:*

(A) *is furnished with sufficient copies of [annual reports, information*

statements or other material sent to stockholders, and] *the material (e.g., annual reports, information statements or other material sent to security holders) by the issuer, stockholder, or trustee;*

(B) *is requested by the issuer, stockholder, or trustee to forward the material to security holders; and,*

(C) *receives [(B)]satisfactory assurance that it will be reimbursed by such issuer, stockholder, or trustee for all out-of-pocket expenses, including reasonable clerical expenses[.].*

[shall transmit promptly to each beneficial owner of stock of such issuer (or the beneficial owner's designated investment adviser) which is in its possession and control and registered in a name other than the name of the beneficial owner of all such material furnished.]

(2) No change.

(f) For purposes of this Rule, the term "designated investment adviser" is a person registered under the Investment Advisers Act of 1940 who exercises investment discretion pursuant to an advisory contract for the beneficial owner and is designated in writing by the beneficial owner to receive proxy and related materials and vote the proxy, and to receive annual reports and other material sent to [stockholders] *security holders.*

(1) No change.

(2) Members [who] that receive such a written designation from a beneficial owner must ensure that the designated investment adviser is registered with the Commission pursuant to the Investment Advisers Act [or] of 1940 and that the investment adviser is exercising investment discretion over the customer's account pursuant to an advisory contract to vote proxies and/or to receive proxy soliciting material, annual reports and other material.

Members must keep records substantiating this information.

(3) No change.

(g) No change.

\* For purposes of this Rule, the term "ERISA" is an acronym for the Employee Retirement Income Security Act of 1974.

IM-2260. Suggested Rates of Reimbursement

(a) No change.

(1) Charges for Initial Proxy and/or Annual Report Mailings

(A) No change.

(A) 20 cents for each copy, plus postage, for annual reports[, which] that are mailed separately from the proxy material pursuant to the instruction of the person soliciting proxies.

(2) No Change.

(3) No Change.

(4) No Change.

(5) No Change.

(a) Members may charge for envelopes, provided that they are not furnished by the *issuer, the trustee, or a [the] person soliciting proxies.*

(b) No change.

\* \* \* \* \*

## 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 Regulation 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 in Item IV below. NASD Regulation 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

##### a. Introduction

Rule 2260 currently provides that a member has an inherent duty in carrying out high standards of commercial honor and just and equitable principles of trade to forward certain information regarding a security to the beneficial owner of such security (or the beneficial owner's designated investment adviser) if the security is held by the member for the beneficial owner, is in the member's possession and control, and is registered in a name other than the name of the beneficial owner.

As currently drafted, however, Rule 2260 does not impose an obligation on members to forward information relating to debt securities to the beneficial owners of such securities. For instance, the communications covered by the Rule are limited to proxy material, all annual reports, information statements, and "other material sent to *stockholders* (emphasis added)." The Rule also limits the member's obligation to forward proxy material to each beneficial owner of *shares* of that issue (or the beneficial owner's designated investment adviser) for *shares* that are held by the member for the beneficial owner. NASD Regulation believes that the lack of any affirmative requirement on broker-dealers to forward information to customers who are

beneficial owners of debt securities raises customer protection issues.

#### b. Background

When the securities industry, with the cooperation of the Commission, began to urge owners to hold securities in "street name," the transition from paper certificates to electronic record of ownership was to be accomplished by providing the beneficial owners of securities held in street name with the same rights and privileges as an owner holding paper certificates. Using the Depository Trust and Clearing Corporation's ("DTCC") book-entry system for establishing ownership results in a chain of records that documents securities ownership, but positions as many as three or four "nominee" owners above the beneficial owner. Through this chain, certain communications from issuers, trustees, and others regarding securities, whether or not covered explicitly by NASD Rule 2260 or parallel exchange rules,<sup>4</sup> are passed through from nominee to nominee until the communication reaches the broker-dealer that holds the securities in street name for its customers.

The current chain of communication was developed informally over a number of years through the efforts of the Commission, the Municipal Securities Rulemaking Board ("MSRB"), other federal and state regulators, and various industry groups, such as The Bond Market Association ("TBMA") (formerly, the Public Securities Association). In May 1998, a working group published certain "best practices" regarding communications from issuers to beneficial owners of defaulted municipal securities.<sup>5</sup> Industry compliance with the best practices, however, is voluntary. NASD Regulation determined to recommend rule amendments to address this issue.

#### c. Proposed Amendments to NASD Rule 2260

NASD Regulation believes that the customer protection issues arising from the lack of any affirmative requirement on broker-dealers to forward information to customers who are beneficial owners of debt securities

should be remedied. To address the regulatory gap, NASD Regulation has developed amendments to Rule 2260 to extend its obligations to debt securities.

The proposed amendments would make Rule 2260 applicable to debt securities but do not otherwise materially change the basic principles and assumptions of the Rule. The proposed amendment would require members to forward information they receive that is "prepared by or on behalf of" the issuer of the security or the trustee and that contains information about such issue including, but not limited to, notices concerning monetary or technical defaults, financial reports, information statements, and material event notices. However, as is currently the case with equity securities, a member's obligation to forward the material does not arise unless the member "receives satisfactory assurance" that it will be reimbursed by such issuer or trustee for all out-of-pocket expenses, is furnished with the material by the issuer or the trustee, and is requested by the issuer or the trustee to forward the material.<sup>6</sup>

The proposed amendment includes language that, as applied to equity securities communications and documentation, is meant to clarify the Rule's existing obligations, not to change them. The proposed change provides: "A member has an inherent duty to forward promptly certain information regarding a security to the beneficial owner (or the beneficial owner's designated investment adviser) if the member *carries the account* in which the security is held for the beneficial owner and the security is registered in a name other than the name of the beneficial owner (emphasis added)." The change was made in response to concerns that current Rule 2260 does not identify clearly which members are responsible for forwarding information to the beneficial holders of securities. The amendments intend to make clear that those firms that carry customer accounts and are capable of identifying the beneficial holders of the accounts are responsible for the member obligations in Rule 2260. As a result, the responsibility to forward information generally will fall on the clearing firm, provided the clearing firm is aware of the identity of the beneficial owners of the accounts. In those cases where a clearing firm is not aware of the identity of the beneficial owners of the accounts, such as when another firm opens an

omnibus account with the clearing firm, the firm that opens the omnibus account will be the "carrying firm" for purposes of the Rule, and therefore will be responsible for forwarding the information.

NASD Regulation also is proposing an amendment to IM-2260 to clarify that, in forwarding proxies and other materials, members may not charge for envelopes that are provided by the issuer or the trustee, as well as by persons soliciting proxies.

#### 2. Statutory Basis

NASD Regulation believes that the proposed rule change, as amended, is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>7</sup> which requires, among other things, that the Association's 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. According to NASD Regulation, the proposed rule is designed to provide customer protection for all holders of debt securities by establishing an affirmative obligation on broker-dealers to forward certain information regarding those securities to the beneficial owners.

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

NASD Regulation 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 the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

<sup>4</sup> See, e.g., New York Stock Exchange Rule 451 ("Transmission of Proxy Material").

<sup>5</sup> See Joint Recommendations for Communicating With the Beneficial Owners of Defaulted Securities, (prepared by Working Group with representatives from National Association of Bond Lawyers, The Bond Market Association, American Bankers Association, Government Finance Officers Association, National Association of State Auditors, Comptrollers and Treasurers, and National Federation of Municipal Analysts) (unpublished report dated May 1998, on file with NASD).

<sup>6</sup> These conditions in Rule 2260 relating to equity securities are similar to those found in NYSE Rules (e.g., 451 and 465), providing for forwarding of proxy and other materials.

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

#### 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. 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 at 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 No. SR-NASD-2002-11 and should be submitted by March 27, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. 02-5323 Filed 3-5-02; 8:45 am]

**BILLING CODE 8010-01-P**

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#### DEPARTMENT OF TRANSPORTATION

##### Office of the Secretary

##### Agency Information Collection; Transportation for Individuals With Disabilities—Accessibility of Over-the-Road Buses (OTRBs); Correction

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Correction to notice and request for comments.

**SUMMARY:** On February 5, 2002 (67 FR 5353), the Department of Transportation published a notice and request for comments on the information collection requirements in the Department's amendment of its final rule on Accessibility of Over-the-Road Buses. This document corrects certain editorial errors in that document. The corrections do not affect the substance of the notice.

**FOR FURTHER INFORMATION CONTACT:**

Linda C. Lasley, Attorney-Advisor, Regulation and Enforcement, Office of the General Counsel, U.S. Department of

Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-4723.

**SUPPLEMENTARY INFORMATION:** On page 5354, column one, of the notice and request for comments, the abstract states in part:

The final rule has four different recordkeeping/reporting requirements. The first has to do with 48 hour advance notice and compensation. The second has to do with equivalent service and compensation."

Unfortunately, through an editorial error on the Department's part, the abstract erroneously refers to "compensation." All references to compensation were removed in the final rule. We regret any confusion caused by the inclusion of compensation in this notice. The Department is not seeking comments regarding compensation. The Department removed this provision from the final rule in response to a court decision.

Issued this 22nd day of February 2002, at Washington, DC.

**Robert C. Ashby,**

*Deputy Assistant General Counsel for Regulation and Enforcement.*

[FR Doc. 02-5154 Filed 3-5-02; 8:45 am]

**BILLING CODE 4910-62-P**

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#### DEPARTMENT OF TRANSPORTATION

##### Coast Guard

[USCG 2001-11105]

##### Information Collection Under Review by the Office of Management and Budget (OMB): 2115-0638

**AGENCY:** Coast Guard, DOT.

**ACTION:** Request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the Coast Guard has forwarded one Information Collection Report (ICR) abstracted below to the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) for review and comment. Our ICR describes the information we seek to collect from the public. Review and comment by OIRA ensures that we impose only paperwork burdens commensurate with our performance of duties.

**DATES:** Please submit comments on or before April 5, 2002.

**ADDRESSES:** To make sure that your comments and related material do not enter the docket [USCG 2001-11105] more than once, please submit them by only one of the following means:

(1)(a) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL-401, 400 Seventh Street SW., Washington, DC 20590-0001. (b) OIRA, 725 17th Street NW., Washington, DC 20503, to the attention of the Desk Officer for the Coast Guard. Caution: Because of recent delays in the delivery of mail, your comments may reach the Facility more quickly if you choose one of the other means described below.

(2)(a) By delivery to room PL-401 at the address given in paragraph (1)(a) above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329. (b) OIRA, at the address given in paragraph (1)(b) above, to the attention of the Desk Officer for the Coast Guard.

(3) By fax to (a) the Docket Management Facility at 202-493-2251 or (b) OIRA 202-395-7285, attention: Desk Officer for the Coast Guard.

(4)(a) Electronically through the Web site for the Docket Management System at <http://dms.dot.gov>. (b) OIRA does not have a Web site on which you can post your comments.

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL-401 (Plaza level), 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at <http://dms.dot.gov>.

Copies of the complete ICR are available for inspection and copying in public dockets. A copy of it is available in docket USCG 2001-11105 of the Docket Management Facility between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays; for inspection and printing on the internet at <http://dms.dot.gov>; and for inspection from the Commandant (G-CIM-2), U.S. Coast Guard, room 6106, 2100 Second Street SW., Washington, DC, between 10 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:**

Barbara Davis, Office of Information Management, 202-267-2326, for questions on this document; Dorothy Beard, Chief, Documentary Services Division, U.S. Department of Transportation, 202-366-5149, for questions on the docket.

**SUPPLEMENTARY INFORMATION**

<sup>8</sup> 17 CFR 200.30-3(a)(12).