

if: (1) It is satisfied that the broker-dealer is acting in good faith in making the application; and (2) exceptional circumstances warrant such action. Regulation T has a similar standard to allow an extension of time for payment for purchases of securities.<sup>8</sup>

NASD proposes to amend Section 8 of Schedule A to NASD's By-Laws to increase the service charge for processing each extension of time request pursuant to the provisions of Regulation T and Rule 15c3-3 from \$2 (or \$1 in the case of electronically filed extension of time requests) to \$4 for all manually or electronically filed extension of time requests. NASD believes that the proposed fees align with the actual costs associated with reviewing, processing, recording and responding to such requests. The NYSE similarly increased the fee it charges for extension requests to \$4.00 per extension.<sup>9</sup>

NASD has filed the proposed rule change for immediate effectiveness. The new fee shall be implemented on July 1, 2006.

## 2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(5) of the Act,<sup>10</sup> which requires, among other things, that NASD's rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that NASD operates or controls. NASD believes that the rule change reflects NASD's increased costs in reviewing, processing and administering the extensions of time requests.

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

NASD 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.

<sup>8</sup> Under Regulation T, a firm's examining authority may grant an extension unless the examining authority believes that the broker-dealer is not acting in good faith or that the broker-dealer has not sufficiently determined that exceptional circumstances warrant such action. See *supra* note 6.

<sup>9</sup> See Exchange Act Release No. 53235 (February 6, 2006), 71 FR 7820 (February 14, 2006) (SR-NYSE-2005-92) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto Relating to Increasing Certain Fees Charged by the NYSE to Its Members and Member Organizations).

<sup>10</sup> 15 U.S.C. 78o-3(b)(5).

### 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

The foregoing rule change is effective upon filing with the Commission pursuant to section 19(b)(3)(A) of the Act<sup>11</sup> and Rule 19b-4(f)(2) thereunder,<sup>12</sup> because it establishes or changes a due, fee, or other charge imposed by NASD. 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>13</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 is consistent with the Act. Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2006-063 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASD-2006-063. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>12</sup> 17 CFR 240.19b-4(f)(2).

<sup>13</sup> The effective date of the original proposed rule change is May 15, 2006, and the effective date for Amendment No. 1 is May 25, 2006. 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 May 25, 2006, the date on which NASD submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(A).

Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 also will be available for inspection and copying at the principal office of NASD.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASD-2006-063 and should be submitted on or before July 12, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

Nancy M. Morris,  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53994; File No. SR-NASD-2006-071]

### Self-Regulatory Organizations: National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Technical Amendments to Rule 3210

June 15, 2006.

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 June 2, 2006, the National Association of Securities Dealers, Inc. ("NASD") filed with 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. NASD has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

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

Rule 19b-4 under the Act,<sup>3</sup> which renders the proposal effective upon receipt of this filing by the Commission. 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 Rule 3210 to change references to paragraph "(b)(1)" in Rule 3210 to paragraph "(b)" in Rule 3210. Below is the text of the proposed rule change. Proposed deletions are in brackets.

\* \* \* \* \*

### **3210. Short Sale Delivery Requirements**

(a) No Change.

(b) The provisions of this rule shall not apply to the amount of the fail to deliver position that the participant of a registered clearing agency had at a registered clearing agency on the settlement day immediately preceding the day that the security became a non-reporting threshold security; *provided, however,* that if the fail to deliver position at the clearing agency is subsequently reduced below the fail to deliver position on the settlement day immediately preceding the day that the security became a non-reporting threshold security, then the fail to deliver position excepted by this paragraph (b)[(1)] shall be the lesser amount.

(c) through (g) 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 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 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 April 4, 2006, the SEC approved new Rule 3210, Short Sale Delivery Requirements, which applies a short

sale delivery framework to those equity securities not otherwise covered by the delivery requirements of Regulation SHO, namely non-reporting OTC equity securities.<sup>4</sup> There is an incorrect paragraph reference in Rule 3210(b). Accordingly, NASD is filing this proposed rule change to amend Rule 3210(b) to change references to paragraph "(b)(1)" and replace it with paragraph "(b)."

NASD proposes to make the proposed rule change effective on July 3, 2006 to coincide with the effective date of Rule 3210.

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

NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,<sup>5</sup> which requires, among other things, that NASD 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. NASD believes that amending the references to the incorrect subparagraph in Rule 3210 will eliminate confusion when reading the provisions of Rule 3210.

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

NASD 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**

Because the foregoing proposed rule change 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 and Rule 19b-4(f)(6) thereunder.<sup>6</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.

### **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. Comments may be submitted by any of the following methods:

#### **Electronic Comments**

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2006-071 on the subject line.

#### **Paper Comments**

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASD-2006-071. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 also will be available for inspection and copying at the principal office of NASD.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASD-2006-071 and should be submitted on or before July 12, 2006.

<sup>4</sup> See Securities Exchange Act Release No. 53596 (April 4, 2006), 71 FR 18392 (April 11, 2006) (File No. SR-NASD-2004-044).

<sup>5</sup> 15 U.S.C. 78o-3(b)(6).

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

<sup>3</sup> 17 CFR 240.19b-4.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

Nancy M. Morris,

Secretary.

[FR Doc. E6-9723 Filed 6-20-06; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53983; File No. SR-NYSE-2005-60]

### Self-Regulatory Organizations; New York Stock Exchange, Inc. (n/k/a New York Stock Exchange LLC); Order Approving Proposed Rule Change and Amendment Nos. 2 and 3 Thereto Relating to Proposed New Rules 342.24 ("Annual Branch Office Inspection") and 342.25 ("Risk-Based Surveillance and Branch Office Identification") To Permit Member Organizations To Classify Appropriate Branch Offices for Cyclical Inspections and Proposed New Rule 342.26 ("Criteria for Inspection Programs")

June 14, 2006.

On August 15, 2005, the New York Stock Exchange, Inc. (n/k/a New York Stock Exchange LLC) ("Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), 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> a proposal to adopt Exchange Rules 342.24 ("Annual Branch Office Inspection") and 342.25 ("Risk-Based Surveillance and Branch Office Identification") to permit organizations to classify appropriate branch offices for cyclical inspections and 342.26 ("Criteria for Inspection Programs"). The Exchange filed Amendment No. 2 to the proposed rule change on April 7, 2006.<sup>3</sup> The proposed rule change, as amended, was published for comment in the **Federal Register** on April 27, 2006.<sup>4</sup> The Commission received no comments regarding the proposal, as amended. On June 12, 2006, the Exchange filed Amendment No. 3 to the proposed rule change.<sup>5</sup> This order

approves the proposed rule change, as amended.

#### I. Description of Proposed Rule Change

The proposed amendments would permit member organizations, with the written approval of the Exchange, to exempt certain branch offices from the general annual branch office inspection requirement of Exchange Rule 342 ("Offices—Approval, Supervision and Control"). Proposed Exchange Rules 342.24 and 342.25 would permit member organizations to submit to the Exchange, for approval, policies and procedures outlining a risk-based surveillance system that the firm would use to identify branch offices requiring less frequent than annual inspections.<sup>6</sup> Such policies and procedures must reflect the member organization's business model and product mix, and must provide, at a minimum, for: (1) Flexibility to initiate "for-cause" inspections, when circumstances warrant, of any branch office that has been exempted from the standard annual inspection cycle; (2) inspection on an unannounced basis of no less than half of the branch offices inspected each year; and (3) a system to allow employees to report compliance issues on a confidential basis outside of the branch office chain of command. As discussed in the Notice and set forth in proposed Exchange Rule 342.25(B), certain prescribed criteria, applied to each branch office, also would be required of any acceptable risk-based surveillance system used to determine which branch offices could be exempted from annual inspection.

The Rule states that certain branch offices would not be deemed appropriate for an exemption under the proposed amendments. Specifically, offices with one or more registered representatives subject to special supervision in the current or immediately preceding year, offices with 25 or more registered individuals, offices in the top 20% of production or customer assets at the member organization, and any branch offices exercising supervision over other branch offices or that have not been inspected within the previous two calendar years would not be eligible for exemption from the annual inspection requirement. In fact, the proposed amendments would require that all

branch offices, without exception, be inspected at least once every three calendar years. Finally, the proposed amendments would re-position language from Interpretation /03 of Exchange Rule 342(a)(b) into the text of Exchange Rule 342.

#### II. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>7</sup> In particular, the Commission finds that the proposal, as amended, is consistent with the provisions of Section 6(b)(5) of the Act,<sup>8</sup> which requires, among other things, that the rules of a national securities exchange 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.

The Commission believes that the proposed rule change, as amended, appropriately balances the need for firms to surveil and inspect their branch offices with the need to provide firms with some flexibility to adapt branch office inspections according to changing circumstances. Specifically, the proposal would allow member organizations to seek an exemption from the requirement to inspect branch offices annually based upon written policies and procedures that provide for a risk-based surveillance system. The policies and procedures would have to be submitted to and approved by the Exchange. The Commission believes that the ability to implement a limited risk-based surveillance system for certain branch offices should allow firms to concentrate their surveillance and compliance resources on those branch offices that require more frequent and thorough on-site inspections.

Furthermore, the Exchange expressly sets forth in proposed Rule 342.25 the risk factors and criteria that firms, at a minimum, should consider when developing their policies and procedures. The Commission believes that providing explicit factors and criteria to distinguish those offices that warrant annual inspection from those that might not should also enable member organizations to more effectively direct a firm's attention to those regulatory risk areas in need of closer scrutiny during the course of an

<sup>7</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> The Exchange filed Amendment No. 1 to the proposed rule change on October 31, 2005 and withdrew Amendment No. 1 on April 7, 2006.

<sup>4</sup> See Securities Exchange Act Release No. 53689 (April 20, 2006), 71 FR 24881 ("Notice").

<sup>5</sup> In Amendment No. 3, the Exchange made several non-substantive clarifying changes to the rule text. This was a technical amendment and is not subject to notice and comment.

<sup>6</sup> In addition, a member organization would still be able to seek an exemption if it has demonstrated to the satisfaction of the Exchange that because of proximity, special reporting, or supervisory practice, other arrangements may satisfy the Exchange rule's requirements for a particular branch office. See proposed Exchange Rule 342.24(A)(1).

<sup>7</sup> In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>8</sup> 15 U.S.C. 78f(b)(5).