

Proposed Rule Change by National Association of Securities Dealers  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

|                                  |   |  |  |  |  |
|----------------------------------|---|--|--|--|--|
| <input type="checkbox"/> Initial | <input checked="" type="checkbox"/> Amendment                           | <input type="checkbox"/> Withdrawal        | <input checked="" type="checkbox"/> Section 19(b)(2) | <input type="checkbox"/> Section 19(b)(3)(A) | <input type="checkbox"/> Section 19(b)(3)(B) |
|                                  |   |  | Rule   |  |  |
| <input type="checkbox"/> Pilot   | <input type="checkbox"/> Extension of Time Period for Commission Action | <input type="text" value=""/> Date Expires | <input type="checkbox"/> 19b-4(f)(1)                 | <input type="checkbox"/> 19b-4(f)(4)         |  |
|                                  |   |  | <input type="checkbox"/> 19b-4(f)(2)                 | <input type="checkbox"/> 19b-4(f)(5)         |  |
|                                  |   |  | <input type="checkbox"/> 19b-4(f)(3)                 | <input type="checkbox"/> 19b-4(f)(6)         |  |

|   |   |
|---|---|
| <input type="checkbox"/> Exhibit 2 Sent As Paper Document | <input type="checkbox"/> Exhibit 3 Sent As Paper Document |
|---|---|

**Description**  
Provide a brief description of the proposed rule change (limit 250 characters).

**Contact Information**  
Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

|            |  |           |   |
|------------|--|-----------|---|
| First Name | <input type="text" value="Andrea"/>                    | Last Name | <input type="text" value="Orr"/>            |
| Title      | <input type="text" value="Assistant General Counsel"/> |           |   |
| E-mail     | <input type="text" value="andrea.orr@nasd.com"/>       |           |   |
| Telephone  | <input type="text" value="(202) 728-8156"/>            | Fax       | <input type="text" value="(202) 728-8264"/> |

**Signature**  
Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

|      |   |
|------|---|
| Date | <input type="text" value="02/25/2005"/>                                       |
| By   | <input type="text" value="Patrice Gliniecki"/>                                |
|      | (Name)  |
|      | <input type="text" value="Senior Vice President and Deputy General Counsel"/> |
|      | (Title)   |

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

**Form 19b-4 Information**

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change**

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

On September 1, 2004, NASD filed SR-NASD-2004-135 to establish new NASD Rule 2441 to clarify and codify the staff position that market makers that intend to trade on a net basis with their customers are required to provide disclosure to, and obtain affirmative consent from, non-institutional customers on an order-by-order basis and obtain consent from institutional customers, which may be evidenced by the use of a negative consent letter. Upon consideration of comments noted by the staff of the Securities and Exchange Commission (“SEC”) concerning SR-NASD-2004-135, NASD filed Partial Amendment No. 1 to SR-NASD-2004-135 on February 16, 2005. Due to a formatting error, proposed new Rule 2441(e) was inadvertently underlined in Partial Amendment No. 1. NASD is filing this Partial Amendment No. 2 to request that the SEC delete the underline from the text of proposed Rule 2441(e) on Page 4. NASD is also including Exhibit 4 (see below) with this Partial Amendment No. 2 to reflect this correction.

\*\*\*\*\*

#### EXHIBIT 4

Exhibit 4 shows the full text of the rule change marking changes from Partial Amendment No. 1 to this Partial Amendment No. 2, with the language of Partial Amendment No. 1 shown as if adopted. Language inadvertently underlined in Partial Amendment No. 1 appears in broken underscore.

\* \* \* \* \*

#### **2441. Net Transactions with Customers**

(a) Prior to executing a transaction with a customer on a “net” basis as defined in paragraph (d) below, a member must provide disclosure to and obtain consent from the customer as provided in this Rule.

(b) With respect to non-institutional customers, the member must obtain the customer’s written consent on an order-by-order basis prior to executing a transaction for or with the customer on a “net” basis and such consent must evidence the customer’s understanding of the terms and conditions of the order. For those non-institutional customers that have granted trading discretion to a fiduciary (e.g. an investment advisor), a member is permitted to obtain such consent from the fiduciary.

(c) With respect to institutional customers, a member may obtain customer consent through the use of a negative consent letter prior to executing a transaction for or with the customer on a “net” basis. If evidencing the consent of an institutional customer through the use of a negative consent letter, before obtaining such consent, a member must clearly disclose to the institutional customer in writing the terms and conditions for handling the customer order(s) and provide the institutional customer with a meaningful opportunity to object to the execution of transactions on a net basis. If no objection from the customer is received, then the member may reasonably conclude that the institutional customer has consented to the member trading on a “net” basis with the customer and the member may rely on such letter for all of the customer’s orders (unless instructed otherwise) pursuant to this Rule.

(d) For purposes of this Rule, (1) “institutional customer” shall mean a customer that qualifies as an “institutional account” under Rule 3110(c)(4); and (2) “net” transaction shall mean a principal transaction in which a market maker, after having received an order to buy (sell) an equity security, purchases (sells) the equity security at one price (from (to) another broker-dealer or another customer) and then sells to (buys from) the customer at a different price.

----- (e) Members must retain and preserve all documentation relating to consent obtained pursuant to this Rule in accordance with Rule 3110(a).