

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

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

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| Exhibit 2 Sent As Paper Document <input type="checkbox"/> | Exhibit 3 Sent As Paper Document <input type="checkbox"/> |
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Description
Provide a brief description of the proposed rule change (limit 250 characters).

Proposed rule change to extend for 120 days, to December 29, 2005, the provisions of NASD Rule 2210(c)(3) and Interpretive Material 2210-5 on a pilot basis.

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 Last Name
 Title
 E-mail
 Telephone Fax

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
 By Senior Vice President and Deputy General Counsel
 (Name) (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.

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), the National Association of Securities Dealers, Inc. ("NASD") is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to extend for 120 days, to December 29, 2005, the provisions of NASD Rule 2210(c)(3) and Interpretive Material 2210-5 (collectively, the "Rules") on a pilot basis, unless extended or permanently approved before that date. The Rules, as approved by the SEC on February 29, 2000, and extended on August 10, 2001, and August 7, 2003, will expire on August 31, 2005. The Rules permit members and associated persons to include bond mutual fund volatility ratings in supplemental sales literature. Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

IM-2210-5. Requirements for the Use of Bond Mutual Fund Volatility Ratings

(This rule and Rule 2210(c)(3) will expire on [August 31] December 29, 2005, unless extended or permanently approved by NASD on or before such date.)

(a) through (c) No change.

* * * * *

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by the Board of Directors of NASD Regulation, Inc. at its meeting on July 20, 2005, which authorized the filing of the rule

change with the SEC. Counsel for The Nasdaq Stock Market and NASD Dispute Resolution were provided an opportunity to consult with respect to the proposed rule change, pursuant to the Plan of Allocation and Delegation of Functions by NASD to its Subsidiaries. The Board of Governors of NASD had an opportunity to review the proposed rule change at its meeting on July 21, 2005. No other action by NASD is necessary for the filing of the proposed rule change. Section 1(a)(ii) and (iii) of Article VII of the NASD By-Laws permits the Board of Governors of NASD to adopt NASD Rules and interpretations without recourse to the membership for approval.

The proposed rule change will become effective upon filing, will be implemented on August 31, 2005, and will expire on December 29, 2005, unless the Rules are extended or approved on a permanent basis before that date.

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

Background and Description of the NASD's Rules on Bond Mutual Fund Volatility Ratings

On February 29, 2000, the SEC approved the adoption of NASD Interpretive Material 2210-5, which permits members and their associated persons to include bond fund volatility ratings in supplemental sales literature (mutual fund sales material that is accompanied or preceded by a fund prospectus).¹ At that time, the SEC also approved NASD Rule 2210(c)(3), which sets forth the filing requirements and review procedures applicable to sales literature containing bond mutual fund volatility ratings. IM-2210-5

¹ See Securities Exchange Act Release No. 42476 (February 29, 2000); 65 FR 12305 (March 8, 2000) (SR-NASD-97-89).

and Rule 2210(c)(3) initially were approved on an 18-month pilot basis that was scheduled to expire on August 31, 2001.² On August 10, 2001, NASD filed with the Commission a proposed rule change that was effective upon filing that extended the effectiveness of IM-2210-5 and Rule 2210(c)(3) an additional two years until August 31, 2003.³ On August 7, 2003, NASD filed a similar proposed rule change with the Commission that was effective upon filing and that extended the effectiveness of IM-2210-5 and Rule 2210(c)(3) until August 31, 2005.⁴

Prior to the pilot, NASD staff interpreted NASD rules to prohibit the use of bond fund volatility ratings in sales material. Under the pilot, IM-2210-5 permits the use of bond fund volatility ratings only in supplemental sales literature and only if certain conditions are met:

- The word "risk" may not be used to describe the rating.
- The rating must be the most recent available and be current to the most recent calendar quarter ended prior to use.
- The rating must be based exclusively on objective, quantifiable factors.
- The entity issuing the rating must provide detailed disclosure on its rating methodology to investors through a toll-free telephone number, a web site,

² Id.

³ See Securities Exchange Act Release No. 44737 (August 22, 2001); 66 FR 45350 (August 28, 2001) (SR-NASD-2001-49); NASD Notice to Members 01-58 (September 2001).

⁴ See Securities Exchange Act Release No. 48353 (August 15, 2003); 68 FR 50568 (August 21, 2003) (SR-NASD-2003-126); NASD Notice to Members 03-48 (August 2003).

or both.

- A disclosure statement containing all of the information required by the rule must accompany the rating. The statement must include such information as the name of the entity issuing the rating, the most current rating and the date it was issued, and a description of the rating in narrative form containing certain specified disclosures.

Rule 2210(c)(3) requires members to file bond mutual fund sales literature that includes or incorporates volatility ratings with the Advertising Regulation Department of NASD ("Department") at least 10 days prior to use for Department approval. If the Department requests changes to the material, the material must be withheld from publication or circulation until the requested changes have been made or the material has been re-filed and approved.

Proposed Rule Change to Extend IM-2110-5 and Rule 2210(c)(3) for 120 Days

NASD intends shortly to submit to the Commission a proposed rule change to make the Rules effective on a permanent basis. However, the process to obtain Commission approval, including publication of the proposal for comment in the Federal Register and responding to any comments received, will extend beyond the expiration of the current pilot on August 31, 2005. Therefore, to maintain operation of the pilot pending the approval process of the Rules on a permanent basis, NASD is proposing to extend the pilot for 120 days until December 29, 2005, unless the Rules are extended or approved on a permanent basis before that date.

The proposed rule change will become effective upon filing, will be implemented at the close of business, August 31, 2005, and will expire on December 29,

2005, unless the Rule are extended or approved on a permanent basis before that date.

(b) Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, 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 extending the effectiveness of IM-2210-5 and Rule 2210(c)(3) for 120 days unless the Rules are extended or approved on a permanent basis before that date will allow members to publish sales material that contains bond fund volatility ratings during this interim period in a manner that will protect investors and serve the public interest.

4. 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, as amended.

5. 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.

6. Extension of Time Period for Commission Action

Not applicable.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The proposed rule change has been filed by NASD as a "non-controversial" rule change and is effective upon filing pursuant to Section 19(b)(3) of the Act and paragraph

(f)(6) of Rule 19b-4 thereunder,⁵ in that the proposed rule change does not significantly affect the protection of investors or the public interest and does not impose any significant burden on competition. NASD has requested that the Commission waive the requirement that the rule change not become operative for 30 days after the date of the filing, as set forth in Rule 19b-4(f)(6)(iii), to prevent the Rules from lapsing. Therefore, the proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Exchange Act and Rule 19b-4(f)(6) thereunder.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Exhibits

Exhibit 1. Completed notice of proposed rule change for publication in the Federal Register.

⁵ 17 CFR 240.19b-4(f)(6).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-NASD-2005-104)
SELF-REGULATORY ORGANIZATIONS

Proposed Rule Change by National Association of Securities Dealers, Inc.
to Extend on a Pilot Basis Rules Concerning Bond Mutual Fund Volatility Ratings

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on , 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 Rule 19b-4 under the Act, 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 extend on a pilot basis the provisions of NASD Rule 2210(c)(3) and Interpretive Material 2210-5 concerning bond mutual fund volatility ratings (collectively, the "Rules") until December 29, 2005, unless the Rules are extended or approved on a permanent basis before that date. Below is the text of the proposed rule

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

IM-2210-5. Requirements for the Use of Bond Mutual Fund Volatility Ratings

(This rule and Rule 2210(c)(3) will expire on [August 31]December 29, 2005, unless extended or permanently approved by NASD at or before such date.)

(a) through (c) 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. 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

Background and Description of the NASD's Rules on Bond Mutual Fund Volatility Ratings

On February 29, 2000, the SEC approved the adoption of NASD Interpretive Material 2210-5, which permits members and their associated persons to include bond fund volatility ratings in supplemental sales literature (mutual fund sales material that is accompanied or preceded by a fund prospectus).³ At that time, the SEC also approved

³ See Securities Exchange Act Release No. 42476 (February 29, 2000); 65 FR 12305 (March 8, 2000) (SR-NASD-97-89).

NASD Rule 2210(c)(3), which sets forth the filing requirements and review procedures applicable to sales literature containing bond mutual fund volatility ratings. IM-2210-5 and Rule 2210(c)(3) initially were approved on an 18-month pilot basis that was scheduled to expire on August 31, 2001.⁴ On August 10, 2001, NASD filed with the Commission a proposed rule change that was effective upon filing that extended the effectiveness of IM-2210-5 and Rule 2210(c)(3) an additional two years until August 31, 2003.⁵ On August 7, 2003, NASD filed a similar proposed rule change with the Commission that was effective upon filing and that extended the effectiveness of IM-2210-5 and Rule 2210(c)(3) until August 31, 2005.⁶

Prior to the pilot, NASD staff interpreted NASD rules to prohibit the use of bond fund volatility ratings in sales material. Under the pilot, IM-2210-5 permits the use of bond fund volatility ratings only in supplemental sales literature and only if certain conditions are met:

- The word "risk" may not be used to describe the rating.
- The rating must be the most recent available and be current to the most recent calendar quarter ended prior to use.
- The rating must be based exclusively on objective, quantifiable factors.
- The entity issuing the rating must provide detailed disclosure on its rating

⁴ Id.

⁵ See Securities Exchange Act Release No. 44737 (August 22, 2001); 66 FR 45350 (August 28, 2001) (SR-NASD-2001-49); NASD Notice to Members 01-58 (September 2001).

⁶ See Securities Exchange Act Release No. 48353 (August 15, 2003); 68 FR 50568 (August 21, 2003) (SR-NASD-2003-126); NASD Notice to Members 03-48 (August 2003).

methodology to investors through a toll-free telephone number, a web site, or both.

- A disclosure statement containing all of the information required by the rule must accompany the rating. The statement must include such information as the name of the entity issuing the rating, the most current rating and the date it was issued, and a description of the rating in narrative form containing certain specified disclosures.

Rule 2210(c)(3) requires members to file bond mutual fund sales literature that includes or incorporates volatility ratings with the Advertising Regulation Department of NASD ("Department") at least 10 days prior to use for Department approval. If the Department requests changes to the material, the material must be withheld from publication or circulation until the requested changes have been made or the material has been re-filed and approved.

Proposed Rule Change to Extend IM-2110-5 and Rule 2210(c)(3) for 120 Days

NASD intends shortly to submit to the Commission a proposed rule change to make the Rules effective on a permanent basis. However, the process to obtain Commission approval, including publication of the proposal for comment in the Federal Register and responding to any comments received, will extend beyond the expiration of the current pilot on August 31, 2005. Therefore, to maintain operation of the pilot pending the approval process of the Rules on a permanent basis, NASD is proposing to extend the pilot for 120 days until December 29, 2005, unless the Rules are extended or approved on a permanent basis before that date.

The proposed rule change will become effective upon filing, will be

implemented at the close of business, August 31, 2005, and will expire on December 29, 2005, unless the Rule are extended or approved on a permanent basis before that date.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, 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 extending the effectiveness of IM-2210-5 and Rule 2210(c)(3) for 120 days unless the Rules are extended or approved on a permanent basis before that date will allow members to publish sales material that contains bond fund volatility ratings during this interim period in a manner that will protect investors and serve the public interest.

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, as amended.

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 proposed rule change has been filed by NASD as a "non-controversial" rule change under Rule 19b-4(f)(6) under the Act,⁷ in that the proposed rule change does not significantly affect the protection of investors or the public interest and does not impose any significant burden on competition. NASD has requested that the Commission waive the requirement that the rule change not become operative for 30 days after the date of the filing, as set forth in Rule 19b-4(f)(6)(iii), to prevent the current pilot Rules from lapsing. The Commission finds good cause for the proposed rule change to become operative prior to the 30th day after the date of publication of notice of filing thereof.

At any given 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. Please include File Number SR-NASD-2005-104 on the subject line.

⁷ 17 CFR 240.19b-4(f)(6).

Paper Comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-NASD-2005-104. 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, 100 F Street, NE, Washington, DC 20549. 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 the File Number SR-NASD-2005-104 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Secretary

⁸ 17 CFR 200.30-3(a)(12).