

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

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

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 amend NASD Rules 2210 and IM-2210-6 to clarify the filing requirements for communications concerning investment analysis tools

**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”),<sup>1</sup> the National Association of Securities Dealers, Inc. (“NASD”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to amend NASD Rules 2210 and IM-2210-6 to clarify the filing requirements for communications concerning investment analysis tools. Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in [brackets]. Text in [bolded brackets] is bracketed in the current rule and remains unchanged.

\* \* \* \* \*

**2210. Communications with the Public**

(a) – (b) Unchanged.

**(c) Filing Requirements and Review Procedures**

(1) Unchanged.

**(2) Requirements to File Certain Material**

Within 10 business days of first use or publication, a member must file the following [advertisements and sales literature] communications with the Department:

(A) – (C) Unchanged.

(D) any template for written reports produced by, or advertisements and sales literature concerning, an investment analysis tool, as such term is defined in Rule IM-2210-6.

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

(3) – (10) Unchanged.

(d) – (e) Unchanged.

#### **IM-2210-6. Requirements for the Use of Investment Analysis Tools**

##### **(a) General Considerations**

This Interpretive Material provides a limited exception to NASD Rule 2210(d)(1)(D).<sup>1</sup> No member may imply that NASD endorses or approves the use of any investment analysis tool or any recommendation based on such a tool. A member that offers or intends to offer an investment analysis tool under this Interpretive Material (whether customers use the member's tool independently or with assistance from the member) must, within 10 days of first use, (1) provide NASD's Advertising Regulation Department (Department) access to the investment analysis tool and, (2) pursuant to Rule 2210(c)(2)(D), file with the Department any template for written reports produced by, or advertisements and sales [material] literature concerning, the tool.<sup>2</sup> The member also must provide any supplemental information requested by the Department. The Department may require that the member modify the investment analysis tool, written-report template, advertisement or sales [material] literature. The Department also may require that the member not offer or continue to offer or use the tool, written-report template, advertisement or sales [material] literature until all changes specified by the Department have been made by the member.

A member that offers an investment analysis tool exclusively to “institutional investors,” as defined in Rule 2211(a)(3), is not subject to the post-use access and filing requirement in this paragraph if the communications relating to or produced by the tool meet the criteria for “institutional sales material,” as defined in Rule 2211(a)(2). A

member that intends to make the tool available to, or that intends to use the tool with, any person other than an institutional investor (such as an employee benefit plan participant or a retail broker-dealer customer) will be subject to the filing and access requirements, however.

As in all cases, a member's compliance with this Interpretive Material does not mean that the member is acting in conformity with other applicable laws and rules. A member that offers an investment analysis tool under this Interpretive Material (whether customers use the member's tool independently or with assistance from the member) is responsible for ensuring that use of the investment analysis tool and all recommendations based on the investment analysis tool (whether made via the automated tool or a written report) comply, as applicable, with NASD's suitability rule (Rule 2310), the other provisions of Rule 2210 (including, but not limited to, the principles of fair dealing and good faith, the prohibition on exaggerated, unwarranted or misleading statements or claims, and any other applicable filing requirements for advertisements and sales literature), the federal securities laws (including, but not limited to, the antifraud provisions), the Securities and Exchange Commission rules (including, but not limited to, SEC Rule 156 under the Securities Act of 1933) and other NASD rules.

**(b) Definition**

For purposes of this Interpretive Material and any interpretation thereof, an “investment analysis tool” is an interactive technological tool that produces simulations and statistical analyses that present the likelihood of various investment outcomes if certain investments are made or certain investment strategies or styles are undertaken,

thereby serving as an additional resource to investors in the evaluation of the potential risks and returns of investment choices.

**(c) Use of Investment Analysis Tools and Related Written Reports and Sales Material**

A member may provide an investment analysis tool (whether customers use the member's tool independently or with assistance from the member), written reports indicating the results generated by such tool and related advertisements and sales [material] literature<sup>3</sup> only if:

(1) the member describes the criteria and methodology used, including the investment analysis tool's limitations and key assumptions;

(2) the member explains that results may vary with each use and over time;

(3) if applicable, the member describes the universe of investments considered in the analysis, explains how the tool determines which securities to select, discloses if the tool favors certain securities and, if so, explains the reason for the selectivity,<sup>4</sup> and states that other investments not considered may have characteristics similar or superior to those being analyzed; and

(4) the member displays the following additional disclosure: “IMPORTANT: The projections or other information generated by [name of investment analysis tool] regarding the likelihood of various investment outcomes are hypothetical in nature, do not reflect actual investment results and are not guarantees of future results.”

**(d) Disclosures**

The disclosures and other required information discussed in paragraph (c) must be clear and prominent and must be in written or electronic narrative form.

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<sup>1</sup> NASD Rule 2210(d)(1)(D) states that “[c]ommunications with the public may not predict or project performance, imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast.” This Interpretive Material allows member firms to offer investment analysis tools (whether customers use the member's tool independently or with assistance from the member), written reports indicating the results generated by such tools and related advertisements and sales [material] literature in certain circumstances.

Rule 2210(d)(1)(D) does not prohibit, and this Interpretive Material does not apply to, hypothetical illustrations of mathematical principles that do not predict or project the performance of an investment or investment strategy.

<sup>2</sup> After the Department has reviewed the investment analysis tool, written-report template, advertisement or sales [material] literature, a member must notify the Department and provide additional access to the tool and re-file any template, advertisement or sales [material] literature if it makes a material change to the presentation of information or disclosures as required by paragraphs (c) and (d).

<sup>3</sup> An advertisement or sales literature [Sales material] that contains only an incidental reference to an investment analysis tool (e.g., a brochure that merely mentions a member's tool as one of the services offered by the member) need not include the

disclosures required by this Interpretive Material and would not need to be filed with the Department, unless otherwise required by the other provisions of Rule 2210.

<sup>4</sup> This disclosure must indicate, among other things, whether the investment analysis tool searches, analyzes or in any way favors certain securities within the universe of securities considered based on revenue received by the member in connection with the sale of those securities or based on relationships or understandings between the member and the entity that created the investment analysis tool. The disclosure also must indicate whether the investment analysis tool is limited to searching, analyzing or in any way favoring securities in which the member makes a market or has any other direct or indirect interest. Members are not required to provide a “negative” disclosure (i.e., a disclosure indicating that the tool does not favor certain securities).

\* \* \* \* \*

(b) Not applicable.

(c) Not applicable.

## **2. Procedures of the Self-Regulatory Organization**

The proposed rule change was approved by the Board of Governors of NASD (“Board”) and authorized the filing with the SEC pursuant to a delegation of authority granted by the Board at its meeting on January 23, 2003, to the General Counsel of NASD Regulatory Policy and Oversight (or his officer designee) (“Delegation of Authority”) to file, without further specific Board authorization, administrative, technical, conforming and non-substantive changes to NASD Rules.

Counsel for The Nasdaq Stock Market and NASD Dispute Resolution have been 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 staff will advise the Board of any action taken pursuant to the Delegation of Authority. No other action by NASD is necessary for the filing of the proposed rule change. Section 1(a)(ii) of Article VII of the NASD By-Laws permits the Board of Governors of NASD to adopt amendments to NASD Rules without recourse to the membership for approval.

NASD has filed the proposed rule change for immediate effectiveness. The implementation date will be the date of filing.

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

(a) Purpose

On September 28, 2004, the Commission approved Rule IM-2210-6, regarding “investment analysis tools.” IM-2210-6(b) defines the term “investment analysis tool” as “an interactive technological tool that produces simulations and statistical analyses that present the likelihood of various investment outcomes if certain investments are made or certain investment strategies or styles are undertaken, thereby serving as an additional resource to investors in the evaluation of the potential risks and returns of investment choices.” IM-2210-6 allows a member to use and provide customers access to investment analysis tools if the member complies with certain disclosure and other requirements. IM-2210-6 became effective on February 14, 2005.

IM-2210-6(a) requires a member that offers or intends to offer an investment analysis tool, within 10 days of first use, to (1) provide the NASD Advertising Regulation Department (Department) access to the investment analysis tool and (2) file with the Department any template for written reports produced by, or sales material concerning, the tool. Recently, questions have arisen regarding why the filing

requirement was not included with other communications filing requirements under Rule 2210(c). Members have noted that persons reading Rule 2210(c) might not understand that there is an additional filing requirement for investment analysis tools report templates and sales material under IM-2210-6. Members have also asked NASD staff what the term “sales material” as used in IM-2210-6 is intended to include, since “sales material” is not defined in either Rule 2210 or IM-2210-6.

In response to these inquiries, NASD is inserting a provision in Rule 2210(c) to reference the existing requirement set forth in IM-2210-6 to file templates for written reports produced by, or advertisements and sales literature concerning, investment analysis tools. This new provision does not make any substantive changes to the current filing requirements for communications concerning investment analysis tools. NASD also is deleting the term “sales material” throughout IM-2210-6 and replacing it with the terms “advertisement” and “sales literature” to clarify the rule’s application. This clarification is consistent with how the staff has applied the rule to date, and thus also does not make any substantive changes to IM-2210-6’s scope.

NASD has filed the proposed rule change for immediate effectiveness. The implementation date will be the date of filing.

(b) Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>2</sup> which requires, among other things, that NASD rules must

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<sup>2</sup> 15 U.S.C. 78o-3(b)(6).

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 clarifying the filing requirements for communications concerning investment analysis tools will eliminate confusion regarding certain provisions of Rule 2210 and IM-2210-6.

**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 is effective upon filing pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6)<sup>4</sup> thereunder, in that the proposed rule change does not significantly affect the protection of investors or the public interest; does not impose any significant burden on competition; and does not become operative for 30 days after filing. NASD requests that the Commission waive the requirement that the rule change, by its terms, not become operative for 30 days after the date of the filing as set forth in Rule

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

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

19b-4(f)(6)(iii),<sup>5</sup> such that NASD is able to clarify the rule text as soon as possible. In accordance with Rule 19b-4, NASD submitted written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing. NASD proposes to make the proposed rule change operative on the date of filing.

**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.

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<sup>5</sup> 17 CFR 240.19b-4(f)(6)(iii).

**EXHIBIT 1**

**SECURITIES AND EXCHANGE COMMISSION**

(Release No. 34- ; File No. SR-NASD-2006-105)

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to Communications Concerning Investment Analysis Tools

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 , 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 Section 19(b)(3)(A)<sup>3</sup> of the Act and Rule 19b-4(f)(6) thereunder,<sup>4</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 Rules 2210 and Interpretive Material 2210-6 to clarify the filing requirements for communications concerning investment analysis tools. Proposed new language is underlined; proposed deletions are in

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

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

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

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

[brackets]. Text in [bolded brackets] is bracketed in the current rule and remains unchanged.

\* \* \* \* \*

**2210. Communications with the Public**

(a) – (b) Unchanged.

**(c) Filing Requirements and Review Procedures**

(1) Unchanged.

**(2) Requirements to File Certain Material**

Within 10 business days of first use or publication, a member must file the following [advertisements and sales literature] communications with the Department:

(A) – (C) Unchanged.

(D) any template for written reports produced by, or advertisements and sales literature concerning, an investment analysis tool, as such term is defined in Rule IM-2210-6.

(3) – (10) Unchanged.

(d) – (e) Unchanged.

**IM-2210-6. Requirements for the Use of Investment Analysis Tools**

**(a) General Considerations**

This Interpretive Material provides a limited exception to NASD Rule 2210(d)(1)(D).<sup>1</sup> No member may imply that NASD endorses or approves the use of any investment analysis tool or any recommendation based on such a tool. A member that offers or intends to offer an investment analysis tool under this Interpretive Material

(whether customers use the member's tool independently or with assistance from the member) must, within 10 days of first use, (1) provide NASD's Advertising Regulation Department (Department) access to the investment analysis tool and, (2) pursuant to Rule 2210(c)(2)(D), file with the Department any template for written reports produced by, or advertisements and sales [material] literature concerning, the tool.<sup>2</sup> The member also must provide any supplemental information requested by the Department. The Department may require that the member modify the investment analysis tool, written-report template, advertisement or sales [material] literature. The Department also may require that the member not offer or continue to offer or use the tool, written-report template, advertisement or sales [material] literature until all changes specified by the Department have been made by the member.

A member that offers an investment analysis tool exclusively to “institutional investors,” as defined in Rule 2211(a)(3), is not subject to the post-use access and filing requirement in this paragraph if the communications relating to or produced by the tool meet the criteria for “institutional sales material,” as defined in Rule 2211(a)(2). A member that intends to make the tool available to, or that intends to use the tool with, any person other than an institutional investor (such as an employee benefit plan participant or a retail broker-dealer customer) will be subject to the filing and access requirements, however.

As in all cases, a member's compliance with this Interpretive Material does not mean that the member is acting in conformity with other applicable laws and rules. A member that offers an investment analysis tool under this Interpretive Material (whether customers use the member's tool independently or with assistance from the member) is

responsible for ensuring that use of the investment analysis tool and all recommendations based on the investment analysis tool (whether made via the automated tool or a written report) comply, as applicable, with NASD's suitability rule (Rule 2310), the other provisions of Rule 2210 (including, but not limited to, the principles of fair dealing and good faith, the prohibition on exaggerated, unwarranted or misleading statements or claims, and any other applicable filing requirements for advertisements and sales literature), the federal securities laws (including, but not limited to, the antifraud provisions), the Securities and Exchange Commission rules (including, but not limited to, SEC Rule 156 under the Securities Act of 1933) and other NASD rules.

**(b) Definition**

For purposes of this Interpretive Material and any interpretation thereof, an “investment analysis tool” is an interactive technological tool that produces simulations and statistical analyses that present the likelihood of various investment outcomes if certain investments are made or certain investment strategies or styles are undertaken, thereby serving as an additional resource to investors in the evaluation of the potential risks and returns of investment choices.

**(c) Use of Investment Analysis Tools and Related Written Reports and Sales**

**Material**

A member may provide an investment analysis tool (whether customers use the member's tool independently or with assistance from the member), written reports indicating the results generated by such tool and related advertisements and sales [material] literature<sup>3</sup> only if:

(1) the member describes the criteria and methodology used, including the investment analysis tool's limitations and key assumptions;

(2) the member explains that results may vary with each use and over time;

(3) if applicable, the member describes the universe of investments considered in the analysis, explains how the tool determines which securities to select, discloses if the tool favors certain securities and, if so, explains the reason for the selectivity,<sup>4</sup> and states that other investments not considered may have characteristics similar or superior to those being analyzed; and

(4) the member displays the following additional disclosure: “IMPORTANT: The projections or other information generated by [name of investment analysis tool] regarding the likelihood of various investment outcomes are hypothetical in nature, do not reflect actual investment results and are not guarantees of future results.”

**(d) Disclosures**

The disclosures and other required information discussed in paragraph (c) must be clear and prominent and must be in written or electronic narrative form.

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<sup>1</sup> NASD Rule 2210(d)(1)(D) states that “[c]ommunications with the public may not predict or project performance, imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast.” This Interpretive Material allows member firms to offer investment analysis tools (whether customers use the member's tool independently or with assistance from the member), written reports

indicating the results generated by such tools and related advertisements and sales [material] literature in certain circumstances.

Rule 2210(d)(1)(D) does not prohibit, and this Interpretive Material does not apply to, hypothetical illustrations of mathematical principles that do not predict or project the performance of an investment or investment strategy.

<sup>2</sup> After the Department has reviewed the investment analysis tool, written-report template, advertisement or sales [material] literature, a member must notify the Department and provide additional access to the tool and re-file any template, advertisement or sales [material] literature if it makes a material change to the presentation of information or disclosures as required by paragraphs (c) and (d).

<sup>3</sup> An advertisement or sales literature [Sales material] that contains only an incidental reference to an investment analysis tool (e.g., a brochure that merely mentions a member's tool as one of the services offered by the member) need not include the disclosures required by this Interpretive Material and would not need to be filed with the Department, unless otherwise required by the other provisions of Rule 2210.

<sup>4</sup> This disclosure must indicate, among other things, whether the investment analysis tool searches, analyzes or in any way favors certain securities within the universe of securities considered based on revenue received by the member in connection with the sale of those securities or based on relationships or understandings between the member and the entity

that created the investment analysis tool. The disclosure also must indicate whether the investment analysis tool is limited to searching, analyzing or in any way favoring securities in which the member makes a market or has any other direct or indirect interest. Members are not required to provide a “negative” disclosure (i.e., a disclosure indicating that the tool does not favor certain securities).

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**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

On September 28, 2004, the Commission approved Rule IM-2210-6, regarding “investment analysis tools.” IM-2210-6(b) defines the term “investment analysis tool” as “an interactive technological tool that produces simulations and statistical analyses that present the likelihood of various investment outcomes if certain investments are made or certain investment strategies or styles are undertaken, thereby serving as an additional resource to investors in the evaluation of the potential risks and returns of investment choices.” IM-2210-6 allows a member to use and provide customers access to investment analysis tools if the member complies with certain disclosure and other requirements. IM-2210-6 became effective on February 14, 2005.

IM-2210-6(a) requires a member that offers or intends to offer an investment analysis tool, within 10 days of first use, to (1) provide the NASD Advertising Regulation Department (Department) access to the investment analysis tool and (2) file with the Department any template for written reports produced by, or sales material concerning, the tool. Recently, questions have arisen regarding why the filing requirement was not included with other communications filing requirements under Rule 2210(c). Members have noted that persons reading Rule 2210(c) might not understand that there is an additional filing requirement for investment analysis tools report templates and sales material under IM-2210-6. Members have also asked NASD staff what the term “sales material” as used in IM-2210-6 is intended to include, since “sales material” is not defined in either Rule 2210 or IM-2210-6.

In response to these inquiries, NASD is inserting a provision in Rule 2210(c) to reference the existing requirement set forth in IM-2210-6 to file templates for written reports produced by, or advertisements and sales literature concerning, investment analysis tools. This new provision does not make any substantive changes to the current filing requirements for communications concerning investment analysis tools. NASD also is deleting the term “sales material” throughout IM-2210-6 and replacing it with the terms “advertisement” and “sales literature” to clarify the rule’s application. This clarification is consistent with how the staff has applied the rule to date, and thus also does not make any substantive changes to IM-2210-6’s scope.

## 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 clarifying the filing requirements for communications concerning investment analysis tools will eliminate confusion regarding certain provisions of Rule 2210 and IM-2210-6.

**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**

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)<sup>6</sup> of the Act and Rule 19b-4(f)(6) thereunder.<sup>7</sup>

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

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f)(6).

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.

NASD has requested that the Commission waive the 30-day operative delay contained in Rule 19b-4(f)(6)(iii)<sup>8</sup> under the Act based upon a representation that the proposed rule change does not make any substantive changes to the current filing requirements for communications concerning investment analysis tools, and will provide clarification to member firms.

#### **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- 2006-105 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.

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<sup>8</sup> 17 CFR 240.19b-4(f)(6)(iii).

All submissions should refer to File Number SR-NASD-2006-105. 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 NASD-2006-105 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.<sup>9</sup>

Nancy M. Morris

Secretary

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<sup>9</sup> 17 CFR 200.30-3(a)(12).