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September 7, 2004

Katherine A. England
Assistant Director
Division of Market Regulation
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-1001

Re: File No. SR-NASD-2004-136
Treatment of Commodity Pool Trail Commissions under Rule 2810

Dear Ms. England:

Pursuant to Rule 19b-4, enclosed please find the above-numbered rule filing. Also enclosed is a 3-1/2" disk containing the rule filing in Microsoft Word 7.0 to facilitate production of the Federal Register release.

If you have any questions, please contact Gary L. Goldsholle, Office of General Counsel, Regulatory Policy and Oversight, at (202) 728-8104; e-mail gary.goldsholle@nasd.com. The fax number of the Office of General Counsel is (202) 728-8264.

Very truly yours,

Barbara Z. Sweeney
Senior Vice President
and Corporate Secretary

Enclosures

File No. SR-NASD-2004-136
Consists of 10 Pages
September 7, 2004

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C.

Form 19b-4

Proposed Rule Change

by

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

Pursuant to Rule 19b-4 under the
Securities Exchange Act of 1934

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(3) 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 delay the implementation date of Notice to Members 04-50 (“NtM 04-50”) until October 12, 2004.

No changes to the text of NASD rules are required by this proposed rule change.

* * * * *

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

(a) The proposed rule change was approved by the Board of Directors of NASD Regulation, Inc. at its meeting on January 21, 2004, which authorized the filing of the rule change with the SEC. 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 NASD Board of Governors had an opportunity to review the proposed rule change at its meeting on January 22, 2004. No other action by NASD is necessary for the filing of the proposed rule change.

NASD will, on the date of this filing, amend NtM 04-50 to reflect this new implementation date.

(b) Questions regarding this rule filing may be directed to Gary L. Goldsholle,

Associate Vice President and Associate General Counsel, Office of General Counsel, Regulatory Policy and Oversight, at (202) 728-8104.

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

(a) Purpose

On July 13, 2004, NASD filed NtM 04-50 with the SEC. In NtM 04-50, NASD announced that it was no longer going to exclude the payment of any trail commissions for commodity pool direct participation programs (“DPPs”) from the underwriting compensation limits of Rule 2810 (“Direct Participation Programs” or “DPP Rule”). NtM 04-50 announced that, “effective immediately, in determining whether to issue a ‘no objections’ opinion in connection with a commodity pool DPP filed with the [NASD Corporate Financing] Department under Rule 2810, NASD staff will consider, among other things, whether the level of underwriting compensation, including the types of trail commission previously excluded, exceeds the 10% limitation in the DPP Rule.” On July 22, 2004, the SEC published the Notice of Filing and Immediate Effectiveness of the NtM 04-50.¹

In view of certain comments submitted to the SEC in response to SR-NASD-2004-108, NASD is delaying the implementation date of NtM 04-50 until October 12, 2004. Thus, the policy announced in NtM 04-50 will not apply to commodity pool DPPs filed with the NASD Corporate Financing Department before October 12, 2004.

¹ Exchange Act Release No. 34-50065, File No. SR-NASD-2004-108, 69 Fed. Reg. 45870 (July 30, 2004) (“SR-NASD-2004-108”).

(b) Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,² which requires, among other things, that NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change is in the public interest and will benefit investors in commodity pool DPPs by limiting the compensation that can be paid to members for selling commodity pool DPPs, and servicing the accounts that hold such investments, to the same amounts that apply to all other DPP investments. At the same time, the proposed rule change also provides additional time for commodity pool DPPs to adjust to the policy of NtM 04-50.

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.

² 15 USC 78o-3(b)(6).

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 and paragraph (f)(1) of Rule 19b-4 thereunder, in that the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule.

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

Not applicable.

9. Exhibits

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

Pursuant to the requirements of the Securities Exchange Act of 1934, NASD has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

NASD, INC.

BY: _____
Barbara Z. Sweeney, Senior Vice President and
Corporate Secretary

Date: September 7, 2004

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-

; File No. SR-NASD-2004-136)

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Implementation Date of Notice to Members 04-50 (Treatment of Commodity Pool Trail Commissions Under Rule 2810)

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 stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of NASD under Section 19(b)(3)(A)(i) of the Act³ and Rule 19b-4(f)(1) thereunder,⁴ 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 filing with the Commission a proposed rule change to delay the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(i).

⁴ 17 CFR 240.19b-4(f)(1).

implementation date of Notice to Members 04-50 (“NtM 04-50”) until October 12, 2004.

No changes to the text of NASD rules are required by this proposed rule 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 July 13, 2004, NASD filed NtM 04-50 with the SEC. In NtM 04-50, NASD announced that it was no longer going to exclude the payment of any trail commissions for commodity pool direct participation programs (“DPPs”) from the underwriting compensation limits of Rule 2810 (“Direct Participation Programs” or “DPP Rule”). NtM 04-50 announced that, “effective immediately, in determining whether to issue a ‘no objections’ opinion in connection with a commodity pool DPP filed with the [NASD Corporate Financing] Department under Rule 2810, NASD staff will consider, among other things, whether the level of underwriting compensation, including the types of trail commission previously excluded, exceeds the 10% limitation in the DPP Rule.” On July

22, 2004, the SEC published the Notice of Filing and Immediate Effectiveness of the NtM 04-50.⁵

In view of certain comments submitted to the SEC in response to SR-NASD-2004-108, NASD is delaying the implementation date of NtM 04-50 until October 12, 2004. Thus, the policy announced in NtM 04-50 will not apply to commodity pool DPPs filed with the NASD Corporate Financing Department before October 12, 2004.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁶ which requires, among other things, that NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change is in the public interest and will benefit investors in commodity pool DPPs by limiting the compensation that can be paid to members for selling commodity pool DPPs, and servicing the accounts that hold such investments, to the same amounts that apply to all other DPP investments. At the same time, the proposed rule change also provides additional time for commodity pool DPPs to adjust to the policy of NtM 04-50.

⁵ Exchange Act Release No. 34-50065, File No. SR-NASD-2004-108, 69 Fed. Reg. 45870 (July 30, 2004) ("SR-NASD-2004-108").

⁶ 15 USC 78o-3(b)(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

NASD has designated the proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of NASD under Section 19(b)(3)(A)(i) of the Act⁷ and Rule 19b-4(f)(1) thereunder,⁸ which renders the proposal effective upon receipt of this filing by the Commission.

At any time within 60 days of this filing, the Commission may summarily abrogate this proposal 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. Persons making written submissions should file six copies thereof with the

⁷ 15 U.S.C. 78s(b)(3)(A)(i).

⁸ 17 CFR 240.19b-4(f)(1).

Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments also may be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR-NASD-2004-136. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of NASD. All submissions should refer to the file number in the caption above and should be submitted by [insert date 21 days from the date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland
Deputy Secretary