

OMB APPROVAL

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SECURITIES AND EXCHANGE COMMISSION
 WASHINGTON, D.C. 20549
 Form 19b-4

File No. SR - 2004 - 174
 Amendment No. 1

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

Initial ☐	Amendment ☒	Withdrawal ☐	Section 19(b)(2) ☒	Section 19(b)(3)(A) ☐	Section 19(b)(3)(B) ☐
			Rule		
Pilot ☐	Extension of Time Period for Commission Action ☐	Date Expires 	☐ 19b-4(f)(1)	☐ 19b-4(f)(4)	
			☐ 19b-4(f)(2)	☐ 19b-4(f)(5)	
			☐ 19b-4(f)(3)	☐ 19b-4(f)(6)	

Exhibit 2 Sent As Paper Document
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Exhibit 3 Sent As Paper Document
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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 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
 (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.

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For complete Form 19b-4 instructions please refer to the EDFS 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

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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

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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 November 21, 2004, NASD filed SR-NASD-2004-174 to amend Rule 2212 (Telemarketing) to require a member that seeks to qualify for the safe harbor set forth in Rule 2212 to, among other things, use a process to prevent telephone solicitations to any telephone number in a version of the national do-not-call registry obtained from the administrator of the registry no more than thirty-one (31) days prior to the date any call is made. Currently, Rule 2212 requires use of a version of the national do-not-call registry no more than three months prior to the date any call is made. NASD's proposed rule change would conform Rule 2212 to the rules of the Federal Communications Commission and Federal Trade Commission, which have undergone similar change.

NASD is filing this partial amendment to request that the SEC approve the proposed rule change on an accelerated basis pursuant to Section 19(b)(2) of the Securities Exchange Act of 1934 ("Act"). This partial amendment also seeks to change the effective date of the proposed rule change from January 1, 2005 to March 1, 2005.

On page 4, please replace the second sentence of the last paragraph to read "NASD anticipates that the effective date will be March 1, 2005."

On page 8, please replace the first two sentences in the first full paragraph to read "NASD's proposed rule change would take effect on March 1, 2005. Accordingly, under the proposed rule change, effective March 1, 2005, an NASD member"

On page 9, Item 7, please replace "Not applicable" with the following basis for accelerated effectiveness pursuant to Section 19(b)(2).

"NASD requests the Commission to find good cause pursuant to Section 19(b)(2) of the Act for approving the proposed rule change prior to the 30th day after its publication in the Federal Register. The proposed rule change conforms Rule 2212 to similar rules of the FTC and FCC. Inasmuch as broker-dealers currently must comply with the do-not-call rules of the FCC, there is no additional burden on broker-dealers in accelerating the effectiveness of the proposed rule change. Moreover, accelerating effectiveness lessens the possibility of any confusion about a broker-dealer's responsibility to use the national do-not-call registry.

Accordingly, because NASD believes the proposed rule will protect investors and the public interest and does not impose any additional burdens, NASD requests the Commission to accelerate the effectiveness of the proposed rule change prior to the 30th day after its publication in the Federal Register."

On page 15, please replace the first two sentences in the first full paragraph to read "NASD's proposed rule change would take effect on March 1, 2005. Accordingly, under the proposed rule change, effective March 1, 2005, an NASD member"

On page 16, please replace the text in Section III, with the following:

“NASD has requested that the Commission find good cause pursuant to Section 19(b)(2) of the Act for approving the proposed rule change prior to the 30th day after publication in the Federal Register. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to NASD and, in particular, the requirements of Section 15A and the rules and regulations thereunder. After careful review the Commission finds that the proposed rule change is consistent with the requirements of Section 15A(b)(6) of the Act⁹ because it is 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.¹⁰ Specifically, the proposed rule change will make the NASD rules consistent with the telemarketing rules of the FTC and FCC, and lessens the possibility of any confusion about a broker-dealer’s responsibility to use the national do-not-call registry.

Based on the above, the Commission believes that there is good cause, consistent with Section 15A(b)(6)¹¹ and Section 19(b)(2) of the Act¹² to approve the proposal on an accelerated basis.”

⁹ 15 U.S.C. 78g-3(b)(6).

¹⁰ In approving this proposed rule change, the Commission notes that it has considered the proposed rule’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹¹ 15 U.S.C. 78g-3(b)(6).

¹² 15 U.S.C. 78s(b)(2).