

OMB APPROVAL

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

File No. SR - 2004 - 165

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



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	Afshin	Last Name	Atabaki
Title	Attorney		
E-mail	afshin.atabaki@nasd.com		
Telephone	(202) 728-8902	Fax	(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 02/01/2005

By Patrice Gliniecki
(Name)

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.

PATRICE GLINIECKI,

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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 October 29, 2004, NASD filed SR-NASD-2004-165 with the Securities and Exchange Commission ("SEC") to amend Rule 2790 to exclude from the definition of "new issue" securities offerings of a business development company, a direct participation program, and a real estate investment trust and to codify the filing requirement for distribution information. In addition, NASD proposed a technical change to the exemption for foreign investment companies in Rule 2790 to clarify the scope of the exemption as reflected in a staff memorandum.

Based upon comments from the SEC staff, NASD is filing this partial amendment to the proposed rule change as discussed in detail below. NASD also is including with this partial amendment Exhibit 4 (below), which shows marked changes to the text of Rule 2790 as it appeared in the preceding filing. Exhibit 4 shows that the term "book-running" has been added before the term "managing underwriter" in the text of proposed Rule 2790(j)(1) and that the term "business" has been added before the term "days" in the text of proposed Rule 2790(j)(1)(B).

On page 4 of the original filing, please add the term "book-running" before the term "managing underwriter" in the text of proposed Rule 2790(j)(1) and the term "business" before the term "days" in the text of proposed Rule 2790(j)(1)(B). On page 18, please add the term "book-running" before the term "managing underwriter" in the text of proposed Rule 2790(j)(1) and the term "business" before the term "days" in the text of proposed Rule 2790(j)(1)(B).

On page 6, Item 3(a)(I), please remove the term "expressly" from the first sentence. On page 18, Item II(A)(1)(I), please remove the term "expressly" from the first sentence.

On page 7, first and second lines from the top of the page, please add a footnote cite to "15 U.S.C. 80a-2(a)(48)." after the term "Company Act," and a footnote cite to "26 U.S.C. 856." after the term "(the 'Code')." On page 19, eighth and ninth lines from the top of the page, please add a footnote cite to "15 U.S.C. 80a-2(a)(48)." after the term "Company Act," and a footnote cite to "26 U.S.C. 856." after the term "(the 'Code')."

On page 8, first line from the top of the page, please replace the term "equivalents" with the term "items." On page 20, sixth line from the top of the page, please replace the term "equivalents" with the term "items."

On page 12, last sentence of the last paragraph, please add the term "book-running" before the term "managing underwriter." On page 13, first and second lines from the top of the page, please add the term "book-running" before the term "managing underwriter." On page 25, fourth line from the top of the page, please add the term "book-running" before the term "managing underwriter." On page 25, eighth and ninth lines from the top of the page, please add the term "book-running" before the term "managing underwriter."

On page 13, Item 6, please add a footnote cite to “15 U.S.C. 78s(b)(2).” to the end of the sentence.

EXHIBIT 4

Proposed new language in the original filing is underlined
Proposed deletions in the original filing are bracketed
Proposed new language in Partial Amendment No. 1 is double-underlined

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2700. SECURITIES DISTRIBUTIONS

* * * * *

2790. Restrictions on the Purchase and Sale of Initial Equity Public Offerings

(a) through (b) No Change.

(c) General Exemptions

The general prohibitions in paragraph (a) of this rule shall not apply to sales to and purchases by the following accounts or persons, whether directly or through accounts in which such persons have a beneficial interest:

(1) through (5) No Change.

(6) An investment company organized under the laws of a foreign

jurisdiction, provided that:

(A) the investment company is listed on a foreign exchange for sale to the public or authorized for sale to the public by a foreign regulatory authority; and

(B) no person owning more than 5% of the shares of the investment company is a restricted person;

(7) through (10) No Change.

(d) through **(h)** No Change.

(i) Definitions

(1) through (8) No Change.

(9) “New issue” means any initial public offering of an equity security as defined

in Section 3(a)(11) of the Act, made pursuant to a registration statement or offering circular. New issue shall not include:

(A) offerings made pursuant to an exemption under Section 4(1), 4(2) or

4(6) of the Securities Act of 1933, or SEC Rule 504 if the securities are “restricted securities” under SEC Rule 144(a)(3), or Rule 144A or Rule 505 or Rule 506 adopted thereunder;

(B) offerings of exempted securities as defined in Section 3(a)(12) of the Act, and rules promulgated thereunder;

(C) offerings of securities of a commodity pool operated by a commodity pool operator as defined under Section 1a(5) of the Commodity Exchange Act;

(D) rights offerings, exchange offers, or offerings made pursuant to a merger or acquisition;

(E) offerings of investment grade asset-backed securities;

(F) offerings of convertible securities;

(G) offerings of preferred securities;

(H) offerings of an investment company registered under the Investment Company Act of 1940; [and]

(I) offerings of securities (in ordinary share form or ADRs registered on Form F-6) that have a pre-existing market outside of the United States[.]; and

(J) offerings of a business development company as defined in Section 2(a)(48) of the Investment Company Act of 1940, a direct participation program as defined in NASD Rule 2810(a)(4), or a real estate investment trust as defined in Section 856 of the Internal Revenue Code.

(10) No Change.

(i) Information Required to be Filed

(1) The book-running managing underwriter of a new issue shall be required to file the following information in the time and manner specified by NASD with respect to new issues:

(A) the initial list of distribution participants and their underwriting commitment and retention amounts on or before the offering date; and

(B) the final list of distribution participants and their underwriting commitment and retention amounts no later than three business days after the offering date.

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