

OMB APPROVAL

OMB Number: 3235-0045
Expires: June 30, 2007
Estimated average burden
hours per response.....38

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

File No. SR - 2004 - 135
Amendment No. 3

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)(2) ☐ 19b-4(f)(3)	☐ 19b-4(f)(4) ☐ 19b-4(f)(5) ☐ 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.

PATRICE GLINIECKI,

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFT 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 September 1, 2004, NASD filed SR-NASD-2004-135 to establish new NASD Rule 2441 to clarify and codify the staff position that market makers that intend to trade on a net basis with their customers are required to provide disclosure to, and obtain affirmative consent from, non-institutional customers on an order-by-order basis and obtain consent from institutional customers, which may be evidenced by the use of a negative consent letter.

On February 16, 2005, in response to comments from the staff of the Securities and Exchange Commission ("SEC"), NASD filed Partial Amendment No. 1 to SR-NASD-2004-135 to, among other things, delete the words "or similar" after the word "net" in all instances.

On February 25, 2005, NASD filed Partial Amendment No. 2 to SR-NASD-2004-135 to correct a formatting error in proposed new Rule 2441(e).

Based on comments from the SEC staff, NASD is filing this Partial Amendment No. 3 to SR-NASD-2004-135 to make the changes described below. NASD is also including Exhibit 4 (see below), which reflects the changes to the text of proposed Rule 2441 marked to show additions to and deletions from the original filing, with this Partial Amendment No. 3.

This Partial Amendment No. 3 seeks to make the following changes:

On pages 2 and 11 of the original filing, please replace the word "advisor" with the word "adviser" in the second to last line of proposed Rule 2441(b).

On pages 7 and 15 of the original filing, please replace the word "advisor" with the word "adviser" in the second to last line of the second full paragraph therein.

On pages 3 and 11 of the original filing, please replace proposed Rule 2441(d)(1) as follows:

"institutional customer" shall mean a customer whose account qualifies as an "institutional account" under Rule 3110(c)(4);

Similarly, in footnote 5 on page 7 and footnote 7 on page 15, replace the first sentence of each such footnote to read as follows:

For purposes of the proposed rule, "institutional customer" shall mean a customer whose account qualifies as an "institutional account" under Rule 3110(c)(4).

On pages 5 and 13 of the original filing, replace the third sentence of the first full paragraph with the following two sentences so it will read as follows:

The difference between the execution price given to the customer in a net transaction and the price of the offsetting transaction to the contra-side (other customer or broker-dealer) is in effect the market maker's compensation. Exchange Act Rule 10b-10(a)(2)(ii)(B) does not require such market maker's compensation to be separately disclosed on the customer confirmation.

On pages 6 and 14 of the original filing, add the word “logistical” before the word “difficulties” in the third sentence of the first full paragraph so it will read as follows:

Members requested guidance on how to document this understanding, and asked for permission to use “negative consent” letters, citing logistical difficulties with obtaining affirmative consent from customers."

EXHIBIT 4

Exhibit 4 shows the full text of the rule change marking changes from the original filing and all prior amendments to this Partial Amendment No. 3, with the language of the original filing together with the changes from Partial Amendment No. 1 and Partial Amendment No. 2 shown as if adopted. Proposed new language in this Partial Amendment No. 3 is double underlined; proposed deletions in this Partial Amendment No. 3 appear in double brackets.

* * * * *

2441. Net Transactions with Customers

(a) Prior to executing a transaction with a customer on a “net” basis as defined in paragraph (d) below, a member must provide disclosure to and obtain consent from the customer as provided in this Rule.

(b) With respect to non-institutional customers, the member must obtain the customer’s written consent on an order-by-order basis prior to executing a transaction for or with the customer on a “net” basis and such consent must evidence the customer’s understanding of the terms and conditions of the order. For those non-institutional customers that have granted trading discretion to a fiduciary (e.g. an investment adviser), a member is permitted to obtain such consent from the fiduciary.

(c) With respect to institutional customers, a member may obtain customer consent through the use of a negative consent letter prior to executing a transaction for or with the customer on a

“net” basis. If evidencing the consent of an institutional customer through the use of a negative consent letter, before obtaining such consent, a member must clearly disclose to the institutional customer in writing the terms and conditions for handling the customer order(s) and provide the institutional customer with a meaningful opportunity to object to the execution of transactions on a net basis. If no objection from the customer is received, then the member may reasonably conclude that the institutional customer has consented to the member trading on a “net” basis with the customer and the member may rely on such letter for all of the customer’s orders (unless instructed otherwise) pursuant to this Rule.

(d) For purposes of this Rule, (1) “institutional customer” shall mean a customer [[that]] whose account qualifies as an “institutional account” under Rule 3110(c)(4); and (2) “net” transaction shall mean a principal transaction in which a market maker, after having received an order to buy (sell) an equity security, purchases (sells) the equity security at one price (from (to) another broker-dealer or another customer) and then sells to (buys from) the customer at a different price.

(e) Members must retain and preserve all documentation relating to consent obtained pursuant to this Rule in accordance with Rule 3110(a).