

OMB APPROVAL

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

File No. SR - 2003 - 104

Amendment No. 5

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

☐

19b-4(f)(1)

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19b-4(f)(4)

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19b-4(f)(2)

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19b-4(f)(5)

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19b-4(f)(3)

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19b-4(f)(6)

Pilot

☐Extension of Time Period
for Commission Action☐

Date Expires

Exhibit 2 Sent As Paper Document

☐

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

Kosha

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Title

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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

06/01/2005

By

Patrice M. 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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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 Sent As Paper Document

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Exhibit 3 - Form, Report, or Questionnaire

Add

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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 Sent As Paper Document

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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

Add

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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.

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934 (“Act”), the National Association of Securities Dealers, Inc. (“NASD”) hereby submits to the Securities and Exchange Commission (“SEC” or “Commission”) partial Amendment No. 5 to SR-NASD-2003-104¹ (the “Proposal”) relating to proposed amendments to Rule 3010(g)(2)(A) to revise the definition of the term “branch office” and adopt IM-3010-1 to provide guidelines on factors to be considered by a member firm in conducting internal inspections of offices.

NASD is filing this partial Amendment No. 5 for the purpose of requesting that the Commission make the following changes:

1. Move the bracket from before the words “Branch Office” to before subparagraph number “(2)” to indicate that such text is proposed to be deleted:

[(2) [[] “Branch Office” means any location identified by any means to the public or customers as a location at which the member conducts an investment banking or securities business, excluding:]

2. Add the letter “s” to the word “conduct” in proposed subparagraph (2)(A) of Rule 3010(g):

(2) (A) A “branch office” is any location, other than a main office, where one or more associated persons of a member regularly conducts the business of effecting any transactions in, or inducing or attempting to induce the purchase or sale of, any security, or that is held out as such, excluding:

3. Delete the parentheses around the subparagraph letters in proposed subparagraphs (a) through (i) of Rule 3010(g)(2)(A)(ii) and revise them to read a. through i.

¹ See 68 FR 70059 (December 16, 2003); Securities Exchange Act Release No. 48897; File No. SR-NASD-2004-104 (Notice of Filing of Proposed Rule Change and Amendments Nos. 1 and 2 Thereto by the National Association of Securities Dealers, Inc. Relating to Proposed New Uniform Definition of “Branch Office” under NASD Rule 3010(g)(2)) (“Notice of Filing”). Technical Amendment No. 3 was filed on December 29, 2004 to reflect the approval order issued by the SEC for SR-NASD-2002-162 (Proposed Supervisory Controls Amendments); 69 FR 35092 (June 23, 2004); Securities Exchange Act Release No. 49883. Amendment No. 4 and Second Response to Comments was filed on March 21, 2005.

4. Change “are” to “is” in proposed subparagraph i. of Rule 3010(g)(2)(A)(ii):

i. A list of the residence locations [are] is maintained by the member;

5. Correct the cross-reference in subparagraph (iii) of Rule 3010(g)(2)(A):

(iii) Any location, other than a primary residence, that is used for securities business for less than 30 business days in any one calendar year, provided the member complies with the provisions of paragraph [(B)(ii) through (viii)] (A)(2)(ii)a. through h. above;

6. Delete the word “or” at the end of subparagraph (v) of Rule 3010(A)(2):

(v) Any location that is used primarily to engage in non-securities activities and from which the associated person(s) effects no more than 25 securities transactions in any one calendar year; provided that any advertisement or sales literature identifying such location also sets forth the address and telephone number of the location from which the associated person(s) conducting business at the non-branch are directly supervised; [or]

7. Replace the word “and” at the end of subparagraph (vi) of Rule 3010(g)(2) with the word “or”:

(vi) The Floor of a registered national securities exchange where a member conducts a direct access business with public customers; [and]or

For your convenience, we have included Attachment A, attached hereto, which shows the text of the proposed rule change, redlined to reflect the proposed amendments from existing NASD rule text.

NASD requests that the Commission find good cause pursuant to Section 19(b)(2) of the Securities Exchange Act of 1934 to approve proposed partial Amendment No. 5 prior to the 30th day after publication in the Federal Register. Although not previously published, the proposed rule change proposes technical changes to rule text to correct formatting errors and section references.

Attachment A

Proposed New Text in the Rule Filing are Underscored

Proposed Deletions in the Rule Filing are [Bracketed]

Proposed New Text as a Result of Amendment No. 5 is Double Underscored

Proposed Deletions as a Result of Amendment No. 5 are ~~Strikedthrough~~

3010. Supervision

(g) Definitions

(1) No Change.

[(2) {“Branch Office” means any location identified by any means to the public or customers as a location at which the member conducts an investment banking or securities business, excluding:}]

[(A) any location identified in a telephone directory line listing or on a business card or letterhead, which listing, card, or letterhead also sets forth the address and telephone number of the branch office or OSJ of the firm from which the person(s) conducting business at the non-branch locations are directly supervised;}]

[(B) any location referred to in a member advertisement, as this term is defined in Rule 2210, by its local telephone number and/or local post office box provided that such reference may not contain the address of the nonbranch location and, further, that such reference also sets forth the address and telephone number of the branch office or OSJ of the firm from which the person(s) conducting business at the non-branch location are directly supervised; or]

[(C) any location identified by address in a member’s sales literature, as this term is defined in Rule 2210, provided that the sales literature also sets forth the address and telephone number of the branch office or OSJ of the firm from which the person(s) conducting business at the non-branch locations are directly supervised.]]

[(D) any location where a person conducts business on behalf of the member occasionally and exclusively by appointment for the convenience of customers, so long as each customer is provided with the address and telephone number of the branch office or OSJ of the firm from which the person conducting business at the nonbranch location is directly supervised.]]

(2) (A) A “branch office” is any location, other than the main office, where one or more associated persons of a member regularly conducts the business of effecting any transactions in, or inducing or attempting to induce the purchase or sale of, any security, or that is held out as such, excluding:

(i) Any location that is established solely for customer service and/or back office type functions where no sales activities are conducted and that is not held out to the public as a branch office;

(ii) Any location that is the associated person’s primary residence; provided that

[(1a)]. Only one associated person, or multiple associated persons who reside at that location and are members of the same immediate family, conduct business at the location;

[(1b)]. The location is not held out to the public as an office and the associated person does not meet with customers at the location;

[(1c)]. Neither customer funds nor securities are handled at that location;

[(1d)]. The associated person is assigned to a designated branch office, and such designated branch office is reflected on all business cards, stationery, advertisements and other communications to the public by such associated person;

[(1e)]. The associated person’s correspondence and communications with the public are subject to the firm’s supervision in accordance with Rule 3010;

[(1f)]. Electronic communications (e.g., e-mail) are made through the member’s electronic system;

[(1g)]. All orders are entered through the designated branch office or an electronic system established by the member that is reviewable at the branch office;

[(h)]. Written supervisory procedures pertaining to supervision of sales activities conducted at the residence are maintained by the member; and

[(i)]. A list of the residence locations ~~are~~ is maintained by the member;

(iii) Any location, other than a primary residence, that is used for securities business for less than 30 business days in any one calendar year, provided the member complies with the provisions of paragraph (B)(ii) through (viii)(A)(2)(i)a. through h. above;

(iv) Any office of convenience, where associated persons occasionally and exclusively by appointment meet with customers, which is not held out to the public as an office;*

(v) Any location that is used primarily to engage in non-securities activities and from which the associated person(s) effects no more than 25 securities transactions in any one calendar year; provided that any advertisement or sales literature identifying such location also sets forth the address and telephone number of the location from which the associated person(s) conducting business at the non-branch locations are directly supervised; ~~or~~

(vi) The Floor of a registered national securities exchange where a member conducts a direct access business with public customers; ~~and/or~~

(vii) A temporary location established in response to the implementation of a business continuity plan.

(B) Notwithstanding the exclusions in paragraph (2)(A), any location that is responsible for supervising the activities of persons associated with the member at one or more non-branch locations of the member is considered to be a branch office.

(C) Notwithstanding the exclusion in paragraph (2)(A), a main office of a member that meets the definition set forth in Rule 3010(g)(1) shall be deemed an office of supervisory jurisdiction, and a main office of a member that is responsible for supervising the activities of persons associated with the member at one or more non-branch locations of the member shall be considered a branch office for all purposes under NASD rules and regulations, other than the registration requirements of Rule 3010(g)(2)(A).

(D) The term “business day” as used in Rule 3010(g)(2) (A) shall not include any partial business day provided that the associated person spends at least four hours on such business day at his or her designated branch office during the hours that such office is normally open for business.

[(3) A member may substitute a central office address and telephone number for the supervisory branch office or OSJ locations referred to in paragraph (g)(2) above provided it can demonstrate to the Association’s District Office having jurisdiction over the member that it has in place a significant and geographically dispersed supervisory system appropriate to its business and that any investor complaint received at the central site is provided to and resolved in conjunction with the office or offices with responsibility over the non-branch business location involved in the complaint.]

*. Where such office of convenience is located on bank premises, signage necessary to comply with applicable federal and state laws, rules and regulations and applicable rules and regulations of the NYSE, other self-regulatory organizations, and securities and banking regulators may be displayed and shall not be deemed “holding out” for purposes of this section.

* * * * *

IM-3010-1. Standards for Reasonable Review

In fulfilling its obligations pursuant to Rule 3010(c), each member must conduct a review, at least annually, of the businesses in which it engages, which review must be reasonably designed to assist in detecting and preventing violations of and achieving compliance with applicable securities laws and regulations and with NASD Rules. Each member shall establish and maintain supervisory procedures that must take into consideration, among other things, the firm’s size, organizational structure, scope of business activities, number and location of offices, the nature and complexity of products and services offered, the volume of business done, the number of associated persons assigned to a location, whether a location has a principal on-site, whether the office is a non-branch location, the disciplinary history of registered representatives or associated persons, etc. The procedures established and the reviews conducted must provide that the quality of supervision at remote offices is sufficient to assure compliance with applicable securities laws and regulations and with NASD Rules. With respect to a non-branch location where a registered representative engages in securities activities, a member must be especially diligent in establishing procedures and conducting reasonable reviews. Based on the factors outlined above, members may need to impose reasonably designed supervisory procedures for certain locations and/or may need to provide for more frequent reviews of certain locations.

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