

OMB APPROVAL

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

File No. SR - 2004 - 043
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 <input type="checkbox"/>	Amendment <input checked="" type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) <input checked="" type="checkbox"/>	Section 19(b)(3)(A) <input type="checkbox"/>	Section 19(b)(3)(B) <input type="checkbox"/>
			Rule		
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action <input type="checkbox"/>	Date Expires <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 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 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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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.

Based on comments and discussion with the staff of the Securities and Exchange Commission (“SEC”), NASD is filing Amendment No. 3 to its Proposed Rule Change Relating to Disclosure of Fees and Expenses in Mutual Fund Performance Sales Material (SR-NASD-2004-043) (the “Rule Filing”). The amendment would create prominence standards for mutual fund performance sales material that are consistent with those of SEC Rule 482 under the Investment Company Act of 1940 (“1940 Act”) and further add certain clarifying language to the proposal’s rule text and the discussion of the proposal in the Purpose section of Amendment No. 2 to the Rule Filing.

The changes to the proposal’s rule text and the Purpose section of Amendment No. 2 are discussed below.

1. Performance Prominence Requirements

The proposal would require all member communications with the public, other than institutional sales material and public appearances, that present non-money market fund open-end investment company performance data as permitted by SEC Rules 482 and 34b-1 to disclose the standardized performance information mandated by those rules, and, to the extent applicable, the fund’s maximum sales charge and annual operating expenses. The proposal would require that this information be set forth “(i) clearly and prominently, and standardized performance information must be in a type size that is at least as large as that used to present any non-standardized performance,” and “(ii) with respect to any radio, television or video advertisement, with equal emphasis to that given to any non-standardized performance.”

These standards are worded somewhat differently than the prominence standards of Rule 482 and Rule 34b-1. To eliminate any inconsistencies, NASD is making the following changes to the proposal’s rule language contained on pages 3-4 and 16-18 of Amendment No. 2 (throughout this Amendment No. 3, new text is double-underlined and deletions are struck through):

2210. Communications With the Public

(a) through (c) No change.

(d) **Content Standards**

(1) through (2) No change.

(3) Disclosure of Fees, Expenses and Standardized Performance

(A) Communications with the public, other than institutional sales material and public appearances, that present non-money market fund open-end management investment company performance data as permitted by Rule 482 under the Securities Act of 1933 and Rule 34b-1 under the Investment Company Act of 1940 must disclose:

(i) the standardized performance information mandated by Rule 482 and Rule 34b-1; and

(ii) to the extent applicable:

(a) the maximum sales charge imposed on purchases or the maximum deferred sales charge, as stated in the investment company's prospectus current as of the date of submission of an advertisement for publication, or as of the date of distribution of other communications with the public; and

(b) annual fund operating expenses, as stated in the investment company's prospectus described in paragraph (a).

(B) All of the information required by paragraph (A) must be set forth:

(i) ~~clearly and prominently, and standardized performance information must be in a type size that is at least as large as that used to present any non-standardized performance;~~

(ii) ~~with respect to any radio, television or video advertisement, with equal emphasis to that given to any non-standardized performance in accordance with the prominence requirements of Rule 482 and Rule 34b-1; and~~

(iii) in any print advertisement, in a prominent text box that contains only the required information and, at the member's option, comparative performance and fee data.

(e) No change.

In light of these changes, the Purpose section of Amendment No. 2 to the Rule Filing also must be revised to reflect the new proposed rule language. In this regard, the second through fifth bullet points on pages 7 and 20 of Amendment No. 2 are revised as follows (the change to the fourth bullet below corrects an error contained in Amendment No. 2):

- All required performance information and fee disclosures be set forth:
 - ~~Clearly and prominently, and standardized performance information be in a type size at least as large as that used for any non-standardized performance information;~~

- ~~With respect to any radio, television or video advertisement, with equal emphasis to that given to any non-standardized performance information in accordance with the prominence requirements of Rule 482 and Rule 34b-1; and~~
- In any print advertisement, ~~(other than radio, television or video advertisements)~~ in a prominent text box that contains only the required information and, at the member's option, comparative performance and fee data.

Similarly, the third and fourth carryover paragraphs on pages 9-10 and 22-23 of Amendment No. 2 are revised as follows:

Accordingly, NASD is amending the prominence requirements (proposed Rule 2210(d)(3)(B)) to make them consistent with the prominence requirements of Rule 482 and 34b-1, to apply the text box rule only to print advertisements and to permit the inclusion of other pertinent comparative data in the text box, as follows (new text is underlined and deletions are bracketed):

(B) All of the information required by subparagraph (A) must be set forth:

- (i) Iclearly and prominently, and standardized performance information must be in a type size that is at least as large as that used to present any non-standardized performance;
- (ii) with respect to any radio, television or video advertisement, with equal emphasis to that given to any non-standardized performance in accordance with the prominence requirements of Rule 482 and Rule 34b-1; and
- (ii[i]) in any print advertisement [other than a radio, television or video advertisement], in a prominent text box that contains only the required information and, at the member's option, comparative performance and fee data.

Finally, with these changes, the second and third full paragraphs on page 10 and 23 of Amendment No. 2 must be revised to reflect the new proposed rule language. Accordingly, those paragraphs are revised as follows:

~~The text box still would be required to present required information clearly and prominently, all required disclosures would have to be given equal emphasis as any non-standardized performance, and standardized performance would have to be presented in a type size as least as large as that used to present non-standardized performance.~~

~~NASD believes that, with these changes, the proposed rule will be consistent with the prominence requirements of SEC Rule 482. For example, the “equal emphasis” standard for radio, television and video advertisements of proposed Rule 2210(d)(3)(B)(ii) is the same standard used in SEC Rule 482(b)(5) for radio and television advertisements. The information required by Rule 2210(d)(3)(A) (i.e., the standardized performance information, maximum sales charge, and annual fund operating expenses) would have to be presented in accordance with the prominence requirements of Rule 482 and Rule 34b-1. Thus, for example, the quotations of the standardized average annual total returns for one, five and ten-year periods would have to be set forth with equal prominence, and any quotations of non-standardized performance could not be set forth in greater prominence than the standardized performance.⁵ Similarly, the disclosures of a fund’s maximum sales load and annual operating expenses generally would have to be presented in print advertisements “in a type size as least as large as and of a style different from, but at least as prominent as, that used in the major portion of the advertisement ...”⁶~~

2. Other Clarifying Changes

NASD also is making certain other clarifying changes to the rule text and the Purpose section of Amendment No. 2.

First, NASD is revising proposed Rule 2211(d)(1) to make clear that it is cross-referencing Rule 2210(d)(3). In this regard, we are revising the text of proposed Rule 2211(d)(1), as set forth on pages 5 and 18 of Amendment No. 2, as follows:

2211. Institutional Sales Material and Correspondence

(a) through (c) No change.

(d) Content Standards Applicable to Institutional Sales Material and Correspondence

(1) All institutional sales material and correspondence are subject to the content standards of Rule 2210(d)(1) and the applicable Interpretive Materials under Rule 2210, and all correspondence is subject to the content standards of paragraph Rule 2210(d)(3).

(2) through (3) No change.

⁵ See SEC Rules 482(d)(3)(iii), 482(d)(5)(iv).

⁶ See SEC Rule 482(b)(5). Rule 482(b)(5) also provides that when performance data is presented in a print advertisement in a type size smaller than that of the major portion of the advertisement, the maximum sales load may appear in a type size no smaller than that of the performance data.

Second, because the use of the phrase “under certain circumstances” in the fourth full paragraph of pages 10 and 23 of Amendment No. 2 might detract from the provision’s clarity by suggesting that the use of hyperlinks to show standardized performance information is prohibited even if the required disclosures are clear, prominent and consistent with the standards of Rule 482, we are revising the fourth full paragraph on pages 10 and 23 of Amendment No. 2 as follows:

NASD also has reconsidered the use of hyperlinks to show standardized performance information. Given that NASD no longer would require web sites to present required disclosures in a text box, we think it also would be appropriate to permit members ~~under certain circumstances~~ to present standardized performance and other required disclosures through the use of a hyperlink, provided that the required disclosures are clear, prominent and consistent with the standards of SEC Rule 482.

Third, footnote 5 on pages 11 and 24 of Amendment No. 2 indicates that a fund’s subsidized annual operating expense ratio may not appear within the required text box for print advertisements. We believe that the proposal should allow this information within the text box, and are revising footnote 5 on pages 11 and 24 of Amendment No. 2 (which will become footnote 7 with the two new footnotes added to the text on pages 10 and 23) as follows:

~~Although the~~ The proposal would permit member firms also to show the expense ratio net of fee waivers and reimbursements, ~~this information would have to appear outside within~~ the required text box for print advertisements, provided that this subsidized expense ratio was and would be in addition to the required expense ratio that is derived from the fund’s prospectus.

Fourth, we are clarifying in the discussion of the use of templates in the Purpose section of Amendment No. 2 whether a member that files a template would be deemed to file all advertisements covered by the template with NASD for purposes of Section 24(b) of the 1940 Act and Rule 24b-3 thereunder.¹ To the extent NASD permits members to file templates of sales material in order to show compliance with Rule 2210(d)(3), NASD does intend to deem all fund sales material covered by the template to be filed with NASD for purposes of Section 24(b) and Rule 24b-3. Accordingly, we are adding a sentence to the end of the third full paragraph on pages 13 and 26 to clarify this intent, as follows:

NASD also agrees that the filing of templates may be appropriate under certain circumstances to show how similar performance sales material will be

¹ Section 24(b) of the 1940 Act prohibits registered open-end investment companies, registered unit investment trusts, and registered face-amount companies or their underwriters from circulating any fund sales material unless three copies of the sales material are filed with the SEC within 10 days of first use. Rule 24b-3 under the 1940 Act provides that sales material will be deemed filed with the SEC for purposes of Section 24(b) upon filing with a registered national securities association that meets certain requirements, such as NASD.

revised to comply with the new standards. NASD will permit the filing of templates on a case-by-case basis to show compliance with the new rule requirements. To the extent that NASD permits members to file templates of sales material to show compliance with the new requirements of Rule 2210(d)(3), all such sales material covered by the template will be deemed filed with NASD for purposes of Section 24(b) of the Investment Company Act of 1940 and Rule 24b-3 thereunder.

* * *