

OMB APPROVAL

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

File No. SR - 2004 - 026

Amendment No. 4

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 Kathleen

Last Name O'Mara

Title Associate General Counsel

E-mail kathleen.omara@nasd.com

Telephone (202) 728-8056

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 09/22/2005

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

☐

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

☐

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.

National Association of Securities Dealers, Inc. (“NASD”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) this Amendment No. 4 to SR-NASD-2004-026 to clarify that a member’s duty to provide best execution in any transaction “for or with a customer of another broker-dealer” does not apply in instances when another broker-dealer is simply executing a customer order against the member’s quote. Stated in another manner, the duty to provide best execution to customer orders received from other broker-dealers arises only when an order is routed from the broker-dealer to the member for the purpose of order handling and execution. This clarification is intended to draw a distinction between those situations in which the member is acting solely as the buyer or seller in connection with orders presented by a broker-dealer against the member’s quote, as opposed to those circumstances in which the member is accepting order flow from another broker-dealer for the purpose of facilitating the handling and execution of such orders.

In addition, on pages 7 and 21-22 of Amendment No. 3, please replace the first sentence of the first paragraph on page 7, and the first sentence of the last paragraph that spans pages 21-22 as follows (including the footnote):

On February 14, 2005, NASD submitted to the SEC Amendment No. 2 to SR-NASD-2004-026, which required that a recipient member provide best execution to all transactions for or with a customer of another broker-dealer. This ensures customer orders receive equivalent best execution protections without regard to whether a customer order is executed by the originating broker-dealer or routed to another broker-dealer.¹

¹ NASD staff continues to believe this approach is preferable to that specified in the original rule proposal and Amendment No. 1 because customer orders will receive best execution protections without regard to whether there is a written agreement or written representations from a recipient member.