

Proposed Rule Change by National Association of Securities Dealers
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial <input checked="" type="checkbox"/>	Amendment <input 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 <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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Description
Provide a brief description of the proposed rule change (limit 250 characters).

Proposal to expand the scope of Rule 2440 and IM-2440 to apply to all securities transactions with or for a customer

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	<input type="text" value="Andrea"/>	Last Name	<input type="text" value="Orr"/>
Title	<input type="text" value="Assistant General Counsel"/>		
E-mail	<input type="text" value="andrea.orr@nasd.com"/>		
Telephone	<input type="text" value="(202) 728-8156"/>	Fax	<input type="text" value="(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	<input type="text" value="01/19/2006"/>
By	<input type="text" value="Stephanie Dumont"/>
	(Name)
	<input type="text" value="Vice President and Associate 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.

STEPHANIE DUMONT,

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS 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.

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”), the National Association of Securities Dealers, Inc. (“NASD”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to expand the scope of Rule 2440 and Interpretive Material (IM) 2440 relating to fair prices and commissions to apply to all securities transactions, whether executed over-the-counter (“OTC”) or on an exchange.

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

2440. Fair Prices and Commissions

In ["over-the-counter"]securities transactions, whether in "listed" or "unlisted" securities, if a member buys for his own account from his customer, or sells for his own account to his customer, he shall buy or sell at a price which is fair, taking into consideration all relevant circumstances, including market conditions with respect to such security at the time of the transaction, the expense involved, and the fact that he is entitled to a profit; and if he acts as agent for his customer in any such transaction, he shall not charge his customer more than a fair commission or service charge, taking into consideration all relevant circumstances, including market conditions with respect to such security at the time of the transaction, the expense of executing the order and the value of any service he may have rendered by reason of his experience in and knowledge of such security and the market therefor.

IM-2440. Mark-Up Policy

The question of fair mark-ups or spreads is one which has been raised from the

earliest days of the Association. No definitive answer can be given and no interpretation can be all-inclusive for the obvious reason that what might be considered fair in one transaction could be unfair in another transaction because of different circumstances. In 1943, the Association's Board adopted what has become known as the "5% Policy" to be applied to transactions executed for customers. It was based upon studies demonstrating that the large majority of customer transactions were effected at a mark-up of 5% or less. The Policy has been reviewed by the Board of Governors on numerous occasions and each time the Board has reaffirmed the philosophy expressed in 1943. Pursuant thereto, and in accordance with Article VII, Section 1(a)(ii) of the By-Laws, the Board has adopted the following interpretation under Rule 2440.

It shall be deemed a violation of Rule 2110 and Rule 2440 for a member to enter into any transaction with a customer in any security at any price not reasonably related to the current market price of the security or to charge a commission which is not reasonable.

(a) through (b) No change.

(c) Transactions to Which the Policy is Applicable

The policy applies to all securities[handled in the over-the-counter market], whether oil royalties or any other security, in the following types of transactions:

(1) through (5) No change.

(d) No change.

* * * * *

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by the Board of Directors of NASD Regulation, Inc. at its meeting on November 30, 2005, which authorized the filing of the rule change with the SEC. Counsel for The Nasdaq Stock Market and NASD Dispute Resolution have been provided an opportunity to consult with respect to the proposed rule change, pursuant to the Plan of Allocation and Delegation of Functions by NASD to its Subsidiaries. The Board of Governors of NASD had an opportunity to review the proposed rule change at its meeting on December 1, 2005. No other action by NASD is necessary for the filing of the proposed rule change. Section 1(a)(ii) of Article VII of the NASD By-Laws permits the Board of Governors of NASD to adopt amendments to NASD Rules without recourse to the membership for approval.

The proposed rule change will be effective upon SEC approval. NASD will announce the approval in a Notice to Members to be published no later than 30 days following Commission approval.

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

Rule 2440, Fair Prices and Commissions, generally requires NASD members, in any OTC transaction with or for a customer, to charge only fair commissions or charges, and to buy or sell securities only at fair prices.¹ Specifically, Rule 2440 provides, in part, that a member is required to buy or sell a security at a fair price to customers, “taking into consideration all relevant circumstances, including market conditions with respect to such security at the time of the transaction, the expense involved, and the fact that he is entitled to a profit...” and if the member acts as agent, the member will not “charge his customer more than a fair commission or service charge, taking into consideration all

relevant circumstances, including market conditions with respect to such security at the time of the transaction, the expense of executing the order and the value of any service he may have rendered by reason of his experience in and knowledge of such security and the market therefore.” The related Mark-Up Policy, IM-2440, provides additional guidance on mark-ups and fair pricing of securities transactions with customers and states that it is inconsistent with just and equitable principles of trade under Rule 2110 for a member to enter into any transaction with a customer in any security at any price not reasonably related to the current market price of the security or to charge a commission that is not reasonable.

Rule 2440 and IM-2440 apply only to OTC transactions. There is no NASD rule that specifically addresses commissions or mark-ups (and mark-downs) for non-OTC transactions (i.e., exchange transactions). Although the language of Rule 2440 and IM-2440 specifically limits their application to OTC transactions, NASD has taken the position that a broker-dealer charging excessive compensation in a transaction with a customer executed on an exchange violates Rule 2110, which requires that a member must, in the conduct of its business, “observe high standards of commercial honor and just and equitable principles of trade.”²

To further clarify members’ obligations to charge fair commissions and mark-ups (or mark-downs), NASD is proposing to amend Rule 2440 and IM-2440 to apply these provisions expressly to all securities transactions, whether they occur in the OTC market

¹ See NASD Rule 2440.

² See NASD Rule 2110. See also *Atlanta-One, Inc. v. SEC*, 100 F.3d 105, 107 n.1 (9th Cir. 1996), which states “[a]lthough [Rule 2440 and IM-2440] deals with the appropriate level of compensation in retail transactions in the over-the-counter market, the [rule] provides guidance by analogy as to appropriate commissions for exchange transactions.”

or on an exchange.³ NASD believes that commission and mark-up (mark-down) requirements should be uniform and not vary based solely on where the transaction occurs. Therefore, a member that charges unfair and excessive commissions or mark-ups (mark-downs) in any customer transaction, whether it is an OTC or exchange transaction, would violate Rule 2440 and IM-2440.⁴

The proposed rule change will be effective upon SEC approval. NASD will announce the approval in a Notice to Members to be published no later than 30 days following Commission approval.

(b) Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that NASD rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change will deter members from charging their customers unfair, unreasonable, or excessive mark-ups or commissions for effecting securities transactions, and will thereby promote investor protection.

4. Self-Regulatory Organization's Statement on Burden on Competition

³ Currently, Rule 2440 and IM-2440 do not apply to transactions in municipal securities and exempt securities, and this would not be changed by the proposal. See NASD Rule 0116. See also Sections 3(a)(12) and 3(a)(29) of the Act. It is important to note, however, that Municipal Securities Rulemaking Board (MSRB) Rule G-30, Prices and Commissions, applies to transactions in municipal securities, and requires a municipal securities dealer engaging in a transaction with a customer, as a principal, to buy or sell securities at an aggregate price that is "fair and reasonable," or, as an agent, to charge a commission or service charge that is not more than a "fair and reasonable amount." See MSRB Rule G-30.

⁴ The proposed amendments would expand the scope of Rule 2440 and IM-2440 to include all securities transactions with or for a customer only. The proposal

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

6. Extension of Time Period for Commission Action

NASD does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Exhibits

Exhibit 1. Completed notice of proposed rule change for publication in the Federal Register.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-NASD-2006-005)
SELF-REGULATORY ORGANIZATIONS

Proposed Rule Change by National Association of Securities Dealers, Inc.
Expand the Scope of Rule 2440 and IM-2440 Relating to Fair Prices and Commissions to
Apply to All Securities Transactions

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on , the National Association of Securities Dealers, Inc. (“NASD”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to expand the scope of Rule 2440 and Interpretive Material (IM) 2440 relating to fair prices and commissions to apply to all securities transactions, whether executed over-the-counter (“OTC”) or on an exchange.

Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

* * * * *

2440. Fair Prices and Commissions

In ["over-the-counter"]securities transactions, whether in "listed" or "unlisted" securities, if a member buys for his own account from his customer, or sells for his own account to his customer, he shall buy or sell at a price which is fair, taking into consideration all relevant circumstances, including market conditions with respect to such security at the time of the transaction, the expense involved, and the fact that he is entitled to a profit; and if he acts as agent for his customer in any such transaction, he shall not charge his customer more than a fair commission or service charge, taking into consideration all relevant circumstances, including market conditions with respect to such security at the time of the transaction, the expense of executing the order and the value of any service he may have rendered by reason of his experience in and knowledge of such security and the market therefor.

IM-2440. Mark-Up Policy

The question of fair mark-ups or spreads is one which has been raised from the earliest days of the Association. No definitive answer can be given and no interpretation can be all-inclusive for the obvious reason that what might be considered fair in one transaction could be unfair in another transaction because of different circumstances. In 1943, the Association's Board adopted what has become known as the "5% Policy" to be applied to transactions executed for customers. It was based upon studies demonstrating that the large majority of customer transactions were effected at a mark-up of 5% or less. The Policy has been reviewed by the Board of Governors on numerous occasions and each time the Board has reaffirmed the philosophy expressed in 1943. Pursuant thereto,

and in accordance with Article VII, Section 1(a)(ii) of the By-Laws, the Board has adopted the following interpretation under Rule 2440.

It shall be deemed a violation of Rule 2110 and Rule 2440 for a member to enter into any transaction with a customer in any security at any price not reasonably related to the current market price of the security or to charge a commission which is not reasonable.

(a) through (b) No change.

(c) Transactions to Which the Policy is Applicable

The policy applies to all securities[handled in the over-the-counter market], whether oil royalties or any other security, in the following types of transactions:

(1) through (5) No change.

(d) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule 2440, Fair Prices and Commissions, generally requires NASD members, in

any OTC transaction with or for a customer, to charge only fair commissions or charges, and to buy or sell securities only at fair prices.³ Specifically, Rule 2440 provides, in part, that a member is required to buy or sell a security at a fair price to customers, “taking into consideration all relevant circumstances, including market conditions with respect to such security at the time of the transaction, the expense involved, and the fact that he is entitled to a profit...” and if the member acts as agent, the member will not “charge his customer more than a fair commission or service charge, taking into consideration all relevant circumstances, including market conditions with respect to such security at the time of the transaction, the expense of executing the order and the value of any service he may have rendered by reason of his experience in and knowledge of such security and the market therefore.” The related Mark-Up Policy, IM-2440, provides additional guidance on mark-ups and fair pricing of securities transactions with customers and states that it is inconsistent with just and equitable principles of trade under Rule 2110 for a member to enter into any transaction with a customer in any security at any price not reasonably related to the current market price of the security or to charge a commission that is not reasonable.

Rule 2440 and IM-2440 apply only to OTC transactions. There is no NASD rule that specifically addresses commissions or mark-ups (and mark-downs) for non-OTC transactions (i.e., exchange transactions). Although the language of Rule 2440 and IM-2440 specifically limits their application to OTC transactions, NASD has taken the position that a broker-dealer charging excessive compensation in a transaction with a customer executed on an exchange violates Rule 2110, which requires that a member

³ See NASD Rule 2440.

must, in the conduct of its business, “observe high standards of commercial honor and just and equitable principles of trade.”⁴

To further clarify members’ obligations to charge fair commissions and mark-ups (or mark-downs), NASD is proposing to amend Rule 2440 and IM-2440 to apply these provisions expressly to all securities transactions, whether they occur in the OTC market or on an exchange.⁵ NASD believes that commission and mark-up (mark-down) requirements should be uniform and not vary based solely on where the transaction occurs. Therefore, a member that charges unfair and excessive commissions or mark-ups (mark-downs) in any customer transaction, whether it is an OTC or exchange transaction, would violate Rule 2440 and IM-2440.⁶

The proposed rule change will be effective upon SEC approval. NASD will announce the approval in a Notice to Members to be published no later than 30 days

⁴ See NASD Rule 2110. See also *Atlanta-One, Inc. v. SEC*, 100 F.3d 105, 107 n.1 (9th Cir. 1996), which states “[a]lthough [Rule 2440 and IM-2440] deals with the appropriate level of compensation in retail transactions in the over-the-counter market, the [rule] provides guidance by analogy as to appropriate commissions for exchange transactions.”

⁵ Currently, Rule 2440 and IM-2440 do not apply to transactions in municipal securities and exempt securities, and this would not be changed by the proposal. See NASD Rule 0116. See also Sections 3(a)(12) and 3(a)(29) of the Act. It is important to note, however, that Municipal Securities Rulemaking Board (MSRB) Rule G-30, Prices and Commissions, applies to transactions in municipal securities, and requires a municipal securities dealer engaging in a transaction with a customer, as a principal, to buy or sell securities at an aggregate price that is “fair and reasonable,” or, as an agent, to charge a commission or service charge that is not more than a “fair and reasonable amount.” See MSRB Rule G-30.

⁶ The proposed amendments would expand the scope of Rule 2440 and IM-2440 to include all securities transactions with or for a customer only. The proposal would not alter that Rule 2440 and IM-2440 do not apply to member-to-member transactions.

following Commission approval.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that NASD rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change will deter members from charging their customers unfair, unreasonable, or excessive mark-ups or commissions for effecting securities transactions, and will thereby promote investor protection.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASD-2006-005 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-NASD-2006-005. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld

from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NASD.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to the File Number SR-NASD-2006-005 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Nancy M. Morris

Secretary

⁷ 17 CFR 200.30-3(a)(12).