

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 - 2005 - 080
 Amendment No. 2

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
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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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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 June 22, 2005, NASD filed SR-NASD-2005-080 with the Securities and Exchange Commission (“SEC”) to establish new Rule 2290 to address disclosures and procedures concerning the issuance of fairness opinions by members. On November 30, 2005, NASD filed Partial Amendment No. 1 to the proposed rule change. Based on additional comments from SEC staff, NASD is filing this Partial Amendment No. 2 to clarify two provisions of the proposed rule change. New text is underlined; deleted text is in brackets.

- Paragraph (a)(4) requires members to disclose the categories of information that formed a substantial basis for the fairness opinion that was supplied to the member by the company requesting the opinion concerning the companies involved in the transaction. Paragraph (a)(4) also requires members to disclose “whether any such information has been independently verified by the member.” NASD is amending the second clause of paragraph (a)(4) to state: “... whether any such information in each such category has been independently verified by the member.” This amendment will make it clear that members’ disclosures must specify on a *category-by-category* basis whether information was or was not verified.

- Paragraph (b)(2) requires that members’ written procedures include a process to determine whether the valuation analyses used in the fairness opinion are appropriate. In Partial Amendment No. 1, paragraph (b)(2) was amended to require that firms’ procedures address the extent to which valuation analyses are determined by the type of company or transaction that is the subject of the fairness opinion. NASD proposes further amendments to paragraph (b)(2) to make clear its intent that members should address in their procedures the appropriateness of the use of particular valuation analyses given the type of company or transaction that is the subject of the fairness opinion. Revised paragraph (b)(2) now states:

the process to determine whether the valuation analyses used in the fairness opinion are appropriate, and the procedures should state the extent to which the appropriateness of the use of such[process] valuation analyses is determined by the type of company or transaction that is the subject of the fairness opinion; and