

OMB APPROVAL

OMB Number: 3235-0045
Expires: June 30, 2007
Estimated average burden
hours per response.....38

Page 1 of 11

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

File No. SR - 2004 - 130
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 ☐	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)(2) ☐ 19b-4(f)(3)	☐ 19b-4(f)(4) ☐ 19b-4(f)(5) ☐ 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 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 officer.

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.

Stephanie Dumont,

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information

Add Remove View

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

Add Remove View

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

Add Remove View

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

Add Remove View

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

Add Remove View

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

Add Remove View

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 Remove View

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 August 26, 2004, the National Association of Securities Dealers, Inc. (“NASD”) filed with the Securities and Exchange Commission (“Commission”) proposed rule change SR-NASD-2004-130, proposing amendments to Rule 2320(g) (the “Three Quote Rule”) and Rule 3110(b) to exclude from the Three Quote Rule’s coverage transactions in foreign securities of a foreign issuer that is part of the FTSE World Index. On May 8, 2006, NASD filed Amendment No. 1 to revise the proposed exclusion to apply to transactions in foreign securities of a foreign issuer that is part of the FTSE All-World Index, rather than the FTSE World Index. On October 19, 2006, NASD filed Amendment No. 2, which replaced and superseded the prior filings in their entirety, to amend the proposed rule text and Purpose section of the rule filing to reflect Commission approval of an intervening rule filing relating to Nasdaq’s operation as an exchange, among other clarifying changes.¹

On October 31, 2006, the Commission published for comment the proposed rule change in the Federal Register.² The Commission received ten comment letters in response to the Federal Register publication, all of which opposed the withdrawal of previously issued exemptive relief regarding the application of the Three Quote Rule to transactions on Canadian exchanges. NASD contemporaneously with this Partial Amendment No. 3 is filing with the Commission a letter responding to the comment letters received. NASD is filing this Partial Amendment No. 3 to propose amendments responsive to the comments received.

NASD is also including with this Partial Amendment No. 3: (1) Exhibit 4 (see below), which reflects changes to the text of the proposed rule change pursuant to this Partial Amendment No. 3, marked to show additions to and deletions from the text as proposed in Amendment No. 2; and (2) Exhibit 5 (see below), which reflects the changes to the current rule text, as amended by this Partial Amendment No. 3.

Proposed Amendments to Codify Existing Exemptions

NASD is filing this Partial Amendment No. 3 to revise its prior position relating to the withdrawal of existing exemptions and clarify that the proposed rule change, if approved, would not supersede any exemptions that previously have been granted relating to the application of the Three Quote Rule to transactions in foreign securities.³ NASD also is proposing to codify the relief granted in the existing exemptions.

¹ See Securities Exchange Act Release No. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006) (order approving of SR-NASD-2005-087).

² See Securities Exchange Act Release No. 54650 (October 25, 2006), 71 FR 63812 (October 31, 2006) (notice of filing of SR-NASD-2004-130 and Amendment Nos. 1 and 2 thereto).

³ Id. at p. 63813 (footnote 13).

As described in Amendment No. 2, NASD staff agreed that the protections of the Three Quote Rule may not be necessary with respect to all orders in foreign securities. In fact, the Commission, in its approval order granting NASD exemptive authority with respect to the Three Quote Rule, specifically indicated that exemptive relief may be appropriate for transactions executed on a foreign exchange.⁴ The Commission stated that exemptive relief may be appropriate in such circumstances because the foreign exchange may constitute the best market for securities that are listed on that market and the time delay involved in contacting three dealers may, therefore, hinder a member from obtaining best execution for the customers.⁵

Since 1998, NASD has received, and granted, several requests for exemptive relief relating to foreign securities. Specifically, pursuant to its exemptive authority in Rule 2320(g)(5), NASD granted several exemptions for customer transactions in Canadian securities executed on a Canadian exchange.⁶ Under the terms of these exemptions, customer transactions in Canadian securities executed on a Canadian exchange are exempt from the requirements of the Three Quote Rule provided that (i) the member periodically monitors and reviews such executions to assure that the member is obtaining best execution under NASD Rule 2320(a) for these customer transactions and (ii) these transactions are handled either as an agency or riskless principal transaction.

As described in our response to comments filed contemporaneously with this Partial Amendment No. 3, in response to commenters concerns, NASD has determined not to withdraw these exemptions. Given that such exemptions may have general applicability, we believe it appropriate to codify the existing exemptions by amending Rule 2320(g) to provide that a member would not be subject to the Three Quote Rule in connection with any transaction for or with a customer in a non-exchange-listed security executed on a Canadian exchange, provided that (i) the member or person associated with the member conducts, pursuant to Rule 2320(a) and the duty of best execution, regular and rigorous reviews of the quality of the execution of such orders in such securities and (ii) the orders are executed either in an agency or riskless principal capacity.

While the proposed rule change would not require a member to obtain three quotes in connection with these transactions in Canadian securities executed on a Canadian exchange, members would continue to be required to comply with, among other rules, their best execution obligations under Rule 2320(a), and to the extent applicable, their suitability obligations under Rule 2310. The proposed rule change also would provide a corresponding exclusion to the recordkeeping requirements set forth in

⁴ See Securities Exchange Act Release No. 39266 (October 22, 1997), 62 FR 56217 (October 29, 1997) (order approving SR-NASD-97-42).

⁵ Id.

⁶ See, e.g., Letter dated May 29, 1998 to Mr. Kenneth W. Perlman, General Counsel, Mayer Schweitzer, Inc. from Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, Inc.

Rule 3110(b) relating to the Three Quote Rule if the member can establish and document its reliance on this exclusion.

Finally, in this Partial Amendment No. 3, NASD requests the Commission to find good cause pursuant to Section 19(b)(2) of the Securities Exchange Act of 1934⁷ for approving the proposed rule change prior to the 30th day after its publication in the Federal Register.

Because NASD believes that the proposed changes in this Partial Amendment No. 3 codify the relief in the existing exemptions granted under the Three Quote Rule, NASD requests the Commission to accelerate the effectiveness of the proposed rule change prior to the 30th day after its publication in the Federal Register.

⁷

15 U.S.C. 78s(b)(2).

EXHIBIT 4

Exhibit 4 shows the changes proposed in this Partial Amendment No. 3, with the proposed changes in Amendment No. 2 shown as if adopted. Proposed new language in this Partial Amendment No. 3 is underlined; proposed deletions in this Partial Amendment No. 3 appear in brackets.

* * * * *

2320. Best Execution and Interpositioning

(a) through (f) No Change.

(g) (1) Except as provided in subparagraph (3) below, in any transaction for or with a customer pertaining to the execution of an order in a non-exchange-listed security (as defined in the Rule 6600 Series), a member or person associated with a member shall contact and obtain quotations from three dealers (or all dealers if three or less) to determine the best inter-dealer market for the subject security.

(2) No Change.

(3) The requirements described in subparagraph (1) above shall not apply:

(A) when two or more priced quotations for a non-exchange-listed security are displayed in an inter-dealer quotation system that permits quotation updates on a real-time basis; or

(B) to any transaction for or with a customer pertaining to the execution of an order in a non-exchange-listed security of a foreign issuer that is part of the FTSE All-World Index if such transaction is executed during the regular business hours of the foreign market for the foreign security and no trading halt or other similar trading or quoting restriction

is in effect in any foreign market on which such foreign security is listed[.]; or

(C) to any transaction for or with a customer pertaining to the execution of an order in a non-exchange-listed security that is listed on a Canadian exchange, provided that (i) such order is executed by the member or a person associated with the member on a Canadian exchange in an agency or riskless principal capacity; and (ii) the member or a person associated with the member conducts, pursuant to NASD Rule 2320(a) and the duty of best execution, regular and rigorous reviews of the quality of the execution of such orders in such securities.

(4) Definitions

For purposes of this paragraph (g):

(A) The term “inter-dealer quotation system” means any system of general circulation to brokers or dealers that regularly disseminates quotations of identified brokers or dealers.

(B) The term “quotation medium” means any inter-dealer quotation system or any publication or electronic communications network or other device that is used by brokers or dealers to make known to others their interest in transactions in any security, including offers to buy or sell at a stated price or otherwise, or invitations of offers to buy or sell.

(5) No Change.

* * * * *

3110. Books and Records

(a) No Change.

(b) Marking of Customer Order Tickets

A person associated with a member shall indicate on the memorandum for each transaction in a non-exchange-listed security, as that term is defined in the Rule 6600 Series, the name of each dealer contacted and the quotations received to determine the best inter-dealer market; however, the requirements of this subparagraph shall not apply if the member can establish and has documented that:

(1) two or more priced quotations for the security are displayed in an inter-dealer quotation system, as defined in Rule 2320(g), that permits quotation updates on a real-time basis for which NASD has access to historical quotation information; or

(2) the transaction is effected in compliance with Rule 2320(g)(3)(B) or (C).

(c) through (j) No Change.

EXHIBIT 5

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

* * * * *

2320. Best Execution and Interpositioning

(a) through (f) No Change.

(g) (1) Except as provided in subparagraph (3) below, [Unless two or more priced quotations for a non-exchange-listed security (as defined in the Rule 6600 Series) are displayed in an inter-dealer quotation system that permits quotation updates on a real-time basis,] in any transaction for or with a customer pertaining to the execution of an order in a non-exchange-listed security (as defined in the Rule 6600 Series), a member or person associated with a member shall contact and obtain quotations from three dealers (or all dealers if three or less) to determine the best inter-dealer market for the subject security.

(2) No Change.

(3) The requirements described in subparagraph (1) above shall not apply:

(A) when two or more priced quotations for a non-exchange-listed security are displayed in an inter-dealer quotation system that permits quotation updates on a real-time basis; or

(B) to any transaction for or with a customer pertaining to the execution of an order in a non-exchange-listed security of a foreign issuer that is part of the FTSE All-World Index if such transaction is executed during the regular business hours of the foreign market for the foreign security and no trading halt or other similar trading or quoting restriction

is in effect in any foreign market on which such foreign security is listed;

or

(C) to any transaction for or with a customer pertaining to the execution of an order in a non-exchange-listed security that is listed on a Canadian exchange, provided that (i) such order is executed by the member or a person associated with the member on a Canadian exchange in an agency or riskless principal capacity; and (ii) the member or a person associated with the member conducts, pursuant to NASD Rule 2320(a) and the duty of best execution, regular and rigorous reviews of the quality of the execution of such orders in such securities.

(4) Definitions

For purposes of this paragraph (g):[,]

(A) T[t]he term “inter-dealer quotation system” means any system of general circulation to brokers or dealers that regularly disseminates quotations of identified brokers or dealers.

(B) [(4) For purposes of this paragraph,] T[t]he term “quotation medium” means any inter-dealer quotation system or any publication or electronic communications network or other device that is used by brokers or dealers to make known to others their interest in transactions in any security, including offers to buy or sell at a stated price or otherwise, or invitations of offers to buy or sell.

(5) No Change.

* * * * *

3110. Books and Records

(a) No Change.

(b) Marking of Customer Order Tickets

A person associated with a member shall indicate on the memorandum for each transaction in a non-exchange-listed security, as that term is defined in the Rule 6600 Series, the name of each dealer contacted and the quotations received to determine the best inter-dealer market; however, the requirements of this subparagraph shall not apply if the member can establish and has documented that:

(1) two or more priced quotations for the security are displayed in an inter-dealer quotation system, as defined in Rule 2320(g), that permits quotation updates on a real-time basis for which NASD [Regulation] has access to historical quotation information; or

(2) the transaction is effected in compliance with Rule 2320(g)(3)(B) or (C).

(c) through (j) No Change.