

OMB APPROVAL

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

File No. SR - 2006 - 124
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)(2) ☐ 19b-4(f)(3)	☐ 19b-4(f)(4) ☐ 19b-4(f)(5) ☐ 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 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.

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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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 Sent As Paper Document

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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 Sent As Paper Document

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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 November 9, 2006, NASD filed with the Commission proposed rule change SR-NASD-2006-124 (proposed NASD Rule 2342), which would require members to advise all new customers, in writing, at the opening of an account, and all customers at least once each year that they may obtain information about the Securities Investor Protection Corporation (“SIPC”), including the SIPC brochure, by contacting SIPC, and to provide such customers with SIPC’s telephone number and Web site address.

On December 13, 2006, the Commission published NASD’s proposed rule change in the Federal Register.¹ On February 7, 2007, NASD filed its response to comments and Partial Amendment No. 1. Partial Amendment No. 1 proposed that members that are excluded from membership in SIPC pursuant to Section 3(a)(2)(A)(i) through (iii) of the Securities Investor Protection Act of 1970 (“SIPA”) and that are not SIPC members be exempt from the requirements of proposed Rule 2342.

NASD is filing this Partial Amendment No. 2 to SR-NASD-2004-124 to further amend the proposed rule text and to change the effective date of this rule change. NASD is also asking for accelerated approval of this Partial Amendment No. 2.

I. Purpose

NASD noted in its response to comments that two commenters had contended that firms that only sell investment products that are not covered under SIPC should be exempt from the requirements of the proposed rule.² One of these commenters submitted a second letter, in which he further contended that firms that are SIPC members but that only sell investment products that are ineligible for SIPC protection may violate Article 11, Section 4(g)(2) of the SIPC By-Laws (Advertisement of Membership) if they are not exempt from the requirements of proposed Rule 2342.³

Article 11, Section 4(g)(2) of the SIPC By-Laws states that “An advertisement including the official symbol, the official advertising statement, or the official explanatory statement might be misleading if [SIPA] as amended would not under most circumstances provide protection with respect to the investment or service advertised or if it might appear that SIPC protects or insures the quality of such investment or service.”

¹ See Securities Exchange Act Release No. 54871 (December 5, 2006), 71 FR 74970 (December 13, 2006) (Notice of Filing of Proposed Rule Change Relating to Proposed Rule 2342 Requiring Members to Provide New Customers, and All Customers Annually, Specific Information About the Securities Investor Protection Corporation) (SR-NASD-2006-124).

² Judith Alderete, Amerest Securities Inc. (December 28, 2006); Frederick G. Ferrara, CFA, Chief Compliance Office, Panattoni Securities, Inc. (December 20, 2006).

³ Frederick G. Ferrara, CFA, Chief Compliance Office, Panattoni Securities, Inc. (February 12, 2007).

The provision further states that matters to which the prohibition apply include, but are not limited to, those relating primarily to: (1) commodities or related contracts or futures contracts or any warrant or right to subscribe to, purchase or sell any of the same; (2) direct investments in real estate and real estate or mortgage brokerage; (3) insurance; (4) investment services which are exclusively advisory in character; and (5) interests which are not included in the definition of “security” in SIPA.

NASD does not opine on whether Article 11, Section 4(g)(2) of the SIPC By-Laws applies to or proscribes the distribution of SIPC’s contact information as required by proposed Rule 2342 by firms whose business is limited to the sale of products that are ineligible for SIPC protection. However, NASD has concluded that NASD should not require such firms to distribute SIPC’s contact information to their customers pursuant to the proposed rule change. Accordingly, NASD is proposing to exempt firms whose business consists exclusively of the sale of investments that are ineligible for SIPC protection from the requirements of proposed Rule 2342.

II. Amended Rule Text

Exhibit 5

Proposed new language in Partial Amendment No. 2 is underlined.

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2000. BUSINESS CONDUCT

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2300. Transactions with Customers

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2342. SIPC Information

All members, except those members: (a) that pursuant to Section 3(a)(2)(A)(i) through (iii) of the Securities Investor Protection Act of 1970 (SIPA) are excluded from membership in the Securities Investor Protection Corporation (SIPC) and that are not SIPC members; and (b) whose business consists exclusively of the sale of investments that are ineligible for SIPC protection, shall advise all new customers, in writing, at the opening of an account, that they may obtain information about SIPC, including the SIPC

brochure, by contacting SIPC, and also shall provide the Web site address and telephone number of SIPC. In addition, such members shall provide all customers with the same information, in writing, at least once each year. In cases where both an introducing firm and clearing firm service an account, the firms may assign these requirements to one of the firms.

III. Request for Accelerated Approval of Partial Amendment No. 2

NASD repeats its request made in Partial Amendment No.1 that the Commission find good cause pursuant to Section 19(b)(2) of the Securities Exchange Act of 1934 to approve Partial Amendment No. 1 as further amended by this Partial Amendment No. 2, prior to the 30th day after publication in the Federal Register. NASD is proposing an effective date of 180 days following Commission approval, in order to give member firms sufficient time to make necessary changes to their customer documentation and systems.⁴ NASD will announce the effective date of the proposed rule change in a Notice to Members to be published no later than 30 days following Commission approval.

⁴ Firms that are members of both NASD and NYSE are reminded that the SEC approved comparable amendments to NYSE Rule 409 regarding the disclosure of SIPC's contact information, which become effective on May 31, 2007. See Securities Exchange Act Release No. 54904 (December 8, 2006), 71 FR 75600 (December 15, 2006); SR-NYSE-2005-09.