

OMB APPROVAL

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Page 1 of 14

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

File No. SR - 2006 - 044
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 Gary Last Name Goldsholle
Title Vice President and Associate General Counsel
E-mail gary.goldsholle@nasd.com
Telephone (202) 728-8104 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 officer.

Date 05/01/2007

By Gary L. Goldsholle
(Name)

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.

Gary Goldsholle,

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF 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 April 11, 2006, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-NASD-2006-044, proposing to adopt Interpretive Material ("IM") to NASD Rule 3060 to require members to adopt policies and procedures addressing business entertainment. On April 17, 2007, NASD filed Amendment No. 1, which replaced and superseded the original filing in its entirety.

Today, NASD is filing this Partial Amendment No. 2 with the Commission to submit an Exhibit 4 that shows the changes in proposed rule text between the original filing and Amendment No. 1.

EXHIBIT 4

The following exhibit shows the changes in rule text between the original filing of SR-NASD-2006-044 and Amendment No. 1. Proposed additions are underlined, proposed deletions are in brackets.

* * * * *

[IM-3060. Entertainment of the Employees of Persons who are Customers of a Member]

[The NASD Board of Governors is issuing this interpretation concerning the obligations of a member in connection with any business entertainment of the employees of a person who is a customer of the member. This interpretation does not apply to any non-cash compensation that falls within Rule 2820(g) or Rule 2830(l) (i.e., entertainment provided by offerors to associated persons of broker-dealers in connection with the sale and distribution of securities). This interpretation supersedes any prior interpretive letters or statements of NASD staff regarding business entertainment under Rule 3060.]

[***]

[For the purpose of this interpretation the following terms are defined:]

[The term “customer” means a person that maintains, or whose employee receives business entertainment for the purpose of having such person prospectively maintain, an account with a member or is otherwise a customer of the member for the purposes of investment banking or securities business, and has an employee act on behalf of the account in some capacity in respect of such account or customer relationship with the member. The term “employee” means all persons who are employees, officers, directors, agents or representatives of a customer.]

[The term “business entertainment” means entertainment provided to an employee in the form of any social event, hospitality event, charitable event, sporting event, entertainment event, meal, leisure activity or event of like nature or purpose, as well as any transportation and/or lodging accompanying or related to such activity or event, including such business entertainment offered in connection with an educational event or business conference, in which a person associated with a member accompanies and participates with such employee irrespective of whether any business is conducted during, or is considered attendant to, such event. If an employee is not accompanied by a person associated with a member, expenses associated with the entertainment will be considered a gift under Rule 3060 unless exigent circumstances make it impracticable for an associated person to attend. All instances where such exigent circumstances are invoked must be clearly and thoroughly documented and be subject to the prior written approval of a designated supervisory person or, if such approval is impractical, to a prompt post-event review to be conducted and documented by such supervisory person. Any thing of value given to an employee that is not defined as business entertainment is a gift under Rule 3060.]

[***]

[The observance of the “high standards of commercial honor and just and equitable principles of trade” required of a member in the conduct of its business under Rule 2110 includes the obligation of a member not to act in a manner contrary to the best interests of a customer in the conduct of business with or for such customer.

Consequently, when a member interacts with an employee of a customer, the member should not do or give anything of value to the employee that is intended or designed to cause, or otherwise would be reasonably judged to have the likely effect of causing, such employee to act in a manner that is inconsistent with the best interests of the customer.]

[Rule 2110 precludes the offering of any thing of value, including but not limited to business entertainment, which comprises conduct, that to any degree, is either illegal under any applicable law or would expose the member, customer or recipient of the member’s entertainment to any civil liability to any governmental authority or agency. For example, any business entertainment that violates the Foreign Corrupt Practices Act, or any commercial bribery statutes and laws, or would subject the member or employee (or customer by reason of respondeat superior) to any civil penalties to any governmental authority or agency because of the entertainment, in turn violates Rule 2110 and this interpretation.]

[Written Policies and Procedures]

[Members must have written policies and procedures that:]

[(1) determine and define forms of business entertainment that are appropriate and inappropriate, including the appropriate venues, nature, frequency, types and class of accommodation and transportation in connection

with business entertainment, and either the dollar amounts of business entertainment or specified dollar thresholds requiring advance written supervisory approval;]

[(2) are designed to promote conduct of the member and its associated persons that is consistent with their obligations under Rule 2110 and does not undermine the performance of an employee's duty to a customer;]

[(3) are designed to effectively supervise compliance with a member's written compliance policies and procedures concerning business entertainment;]

[(4) are designed to maintain detailed records of the nature and expense of any business entertainment in excess of \$50 and make such information available upon written request to a customer in respect of its employees;]

[(5) establish standards to ensure that persons designated to supervise, approve and document business entertainment expenses are sufficiently qualified and that periodic monitoring for compliance with the written policies and procedures is conducted (by an independent reviewer, when practicable); and]

[(6) require appropriate training and education to all applicable personnel.]

[Members may distinguish, and set specifically tailored standards for, business entertainment in connection with events that are educational, charitable or philanthropic in nature. If such differentiation is made, it must be explicitly addressed in the written policies and procedures with specifically tailored standards. Finally, a member must be able to demonstrate that it trains its associated persons who supervise and are subject to

such written business entertainment policies and procedures in all applicable requirements.]

[Acceptable Forms of Business Entertainment]

[A member may determine that certain activities, though legal, are nevertheless inappropriate for business entertainment. Similarly, members may determine that certain modes of private transport, luxurious accommodations, or destinations are not appropriate either as a matter of course or unless certain circumstances are present and appropriate supervisory or compliance personnel have approved the business entertainment.]

[The Board of Governors believes that the standards of entertainment adopted by members must meet the requirement under Rule 2110 that members and employees adhere to high standards of commercial honor. Consequently, a member would violate this interpretation and the rule, not only if it failed to adopt such procedures, but also if the procedures set standards that are so unbounded or vague that no reasonable determination of propriety can be discerned.]

[A member's written policies and procedures must also be reasonably designed to achieve compliance with the obligation of the member and its associated persons to act in the best interests of its customer in connection with the conduct of business with or for such customer, including the avoidance of any business entertainment of an employee that is intended or designed to cause, or otherwise would be reasonably judged to have the likely effect of causing, such employee to act in a manner that is inconsistent with the best interests of the customer. As an example, members should develop written policies and procedures reasonably designed to preclude providing business entertainment that is so lavish or extensive in nature that an employee would likely feel compelled to place

order flow on behalf of the customer without due regard to best execution or other transaction pricing considerations. In sum, the Board of Governors believes that the guiding principle in navigating the concern of placing an employee in conflict with his duty to a customer is that members should compete for business on the basis of providing the best professional services. While it is not inappropriate for business entertainment to foster an environment for the member to promote or educate with respect to such professional services, it is inconsistent with the terms of this interpretation to use business entertainment to provide incentives to employees to conduct customer business with and/or through the member without due consideration as to whether the nature and terms of such professional services meet the objectives and are in the best interests of the account.]

[Supervision]

[As is the case with every NASD rule, supervision is a critical component of business entertainment policies and procedures. Members are free to define the approach and method of their written policies and procedures provided they are reasonably designed to comport with the principles stated in this interpretation. Irrespective of the manner in which the members craft their procedures, it must be clear from the supervisory policies and procedures what factors determine appropriate levels of business entertainment and how those determinations are executed, monitored, and enforced. In addition, such supervisory procedures should provide a method for evidencing both the breadth of supervisory activities as well as the information upon which such supervision is conducted. For example, a member's policies and procedures must evidence the basis upon which a supervisor will determine that business entertainment does not violate a

member's standards as to the nature, frequency and dollar amounts of entertainment. Finally, the member must review periodically the policies and procedures it establishes to determine if they are practicable and fulfill their purpose.]

* * * * *

IM-3060. Business Entertainment

The NASD Board of Governors is issuing this interpretation concerning the obligations of a member in connection with any business entertainment of a customer representative. This interpretation does not apply to any non-cash compensation that falls within Rule 2820(g) or Rule 2830(l) (i.e., entertainment provided by offerors to associated persons of a member in connection with the sale and distribution of variable contracts or investment company securities). This interpretation does not apply to any member that does not engage in business entertainment. For any member that engages in business entertainment, this interpretation applies only with respect to business entertainment provided to customer representatives. This interpretation supersedes any prior interpretive letters or statements of NASD staff regarding business entertainment under Rule 3060.

(a) General Requirements

No member or person associated with a member shall, directly or indirectly, provide any business entertainment to a customer representative pursuant to the establishment of, or during the course of, a business relationship with any customer that is intended or designed to cause, or would be reasonably judged to have the likely effect of causing, such customer representative to act in a manner that is inconsistent with:

(1) the best interests of the customer; or

(2) the best interests of any person to whom the customer owes a fiduciary duty.

(b) Definitions

For purposes of this interpretation, the following definitions shall apply:

(1) The term “customer” means:

(A) a person that maintains a business relationship with a member via the maintenance of an account, through the conduct of investment banking, or pursuant to other securities-related activity; or

(B) a person whose customer representative receives business entertainment for the purpose of encouraging such person to establish a business relationship with the member by opening an account with the member or by conducting investment banking or other securities-related activity with the member.

(2) The term “customer representative” means a person who is an employee, officer, director, or agent of a customer, unless such person is a family member of the customer.

(3) The term “family member” means a person’s parents, mother-in-law or father-in-law, spouse, brother or sister, brother-in-law or sister-in-law, son-in-law or daughter-in-law, and children.

(4) The term “business entertainment” means any social event, hospitality event, sporting event, entertainment event, meal, leisure activity, or event of like nature or purpose, including business entertainment offered in connection with a charitable event, educational event or business conference, as well as any

transportation or lodging related to such activity or event, in which an associated person of a member accompanies a customer representative.

(A) If a customer representative is not accompanied by an appropriate associated person of the member, any expenses associated with the business entertainment will be considered a gift under Rule 3060 unless exigent circumstances make it impractical for an associated person of the member to attend. All instances where such exigent circumstances are invoked must be clearly and thoroughly documented and be subject to the prior written approval of a designated supervisory person or, in very limited circumstances where such prior approval cannot reasonably be obtained, to a prompt post-event review to be conducted and documented by such supervisory person.

(B) Anything of value given or provided to a customer representative that does not fall within the definition of “business entertainment” is a gift under Rule 3060.

(C) In valuing business entertainment expenses pursuant to this interpretation, a member’s written policies and procedures must specify the methodology to be used by the member to calculate the value of business entertainment. In general, business entertainment expenses should be valued at the higher of face value or cost to the member.

(c) Written Policies and Procedures

(1) Each member must have written policies and supervisory procedures that:

(A) define forms of business entertainment that are appropriate and inappropriate using quantitative and/or qualitative standards that address the nature and frequency of the entertainment provided, as well as the type and class of any accommodations or transportation provided in connection with such business entertainment; and

(B) make clear that anything of value given or otherwise provided to a customer representative that does not fall within the definition of “business entertainment” is a gift under Rule 3060; and

(C) impose either specific dollar limits on business entertainment or require advance written supervisory approval beyond specified dollar thresholds; and

(D) are designed to detect and prevent business entertainment that is intended as, or could reasonably be perceived to be intended as, an improper quid pro quo or that could otherwise give rise to a potential conflict of interest or undermine the performance of a customer representative’s duty to a customer or any person to whom the customer owes a fiduciary duty; and

(E) establish standards to ensure that persons designated to supervise and administer the written policies and procedures are sufficiently qualified; and

(F) require appropriate training and education for all personnel who supervise, administer, or are subject to the written policies and procedures.

(2) A member's written policies and procedures may distinguish, and set specifically tailored standards for, business entertainment in connection with events that are deemed to be primarily educational, charitable, or philanthropic in nature, provided that such standards comply with the requirements of this interpretation and are explicitly addressed in the written policies and procedures.

(d) Recordkeeping

(1) Each member's written policies and procedures must require the maintenance of detailed records of business entertainment expenses provided to any customer representative. The member is not required to maintain records of:

(A) business entertainment when the total value of the business entertainment, including all expenses associated with the business entertainment, does not exceed \$50 per day; or

(B) additional expenses incurred in connection with otherwise recorded business entertainment that do not, in the aggregate, exceed \$50 per day.

(2) Each member's written policies and procedures must include provisions reasonably designed to prevent associated persons of the member from circumventing the recordkeeping requirements in contravention of the spirit and purpose of this interpretation (e.g., a pattern of providing a customer representative with business entertainment valued at \$48).

(3) Each member's written policies and procedures must require that, upon a customer's written request, the member will promptly make available to the customer any business entertainment records regarding business entertainment

provided to customer representatives of that customer.

(e) Exemption for Members with Business Entertainment Expenses Below

\$7,500

A member whose business entertainment expenses in the course of its fiscal year are below \$7,500 shall be subject only to paragraphs (a), (b), and (c)(1)(D) and (E) of this interpretation, and shall be exempt from paragraphs (c) (other than (c)(1)(D) and (E) as noted above) and (d). Each member that relies on this exemption must evidence that its business entertainment expenses are below the \$7,500 threshold.

* * * * *