

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-54496; File No. SR-NASD-2006-105)

September 25, 2006

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Communications Concerning Investment Analysis Tools

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 7, 2006, 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 and II, which Items have been prepared by NASD. NASD has designated the proposed rule change as constituting a “non-controversial” rule change under Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon receipt of this filing by the Commission. 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 amend NASD Rule 2210 and Interpretive Material 2210-6 to clarify the filing requirements for communications concerning investment analysis tools. The text of the proposed rule change is available on NASD’s web site

---

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

(www.nasd.com), at the NASD's Office of the Secretary, and at the Commission's Public Reference Room.

**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. 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

On September 28, 2004, the Commission approved IM-2210-6, regarding "investment analysis tools." IM-2210-6(b) defines the term "investment analysis tool" as "an interactive technological tool that produces simulations and statistical analyses that present the likelihood of various investment outcomes if certain investments are made or certain investment strategies or styles are undertaken, thereby serving as an additional resource to investors in the evaluation of the potential risks and returns of investment choices." IM-2210-6 allows a member to use and provide customers access to investment analysis tools if the member complies with certain disclosure and other requirements. IM-2210-6 became effective on February 14, 2005.

IM-2210-6(a) requires a member that offers or intends to offer an investment analysis tool, within 10 days of first use, to (1) provide the NASD Advertising Regulation Department (Department) access to the investment analysis tool, and (2) file with the Department any template for written reports produced by, or sales material concerning,

the tool. Recently, questions have arisen regarding why the filing requirement was not included with other communications filing requirements under Rule 2210(c). Members have noted that persons reading Rule 2210(c) might not understand that there is an additional filing requirement for investment analysis tool report templates and sales material under IM-2210-6. Members have also asked NASD staff what the term “sales material” as used in IM-2210-6, is intended to include, since “sales material” is not defined in either Rule 2210 or IM-2210-6.

In response to these inquiries, NASD is including a provision in Rule 2210(c) that refers to the existing requirement set forth in IM-2210-6 to file templates for written reports produced by, or advertisements and sales literature concerning, investment analysis tools. This new provision does not make any substantive changes to the current filing requirements for communications concerning investment analysis tools. NASD also is deleting the term “sales material” throughout IM-2210-6 and replacing it with the terms “advertisement” and “sales literature” to clarify the rule’s application. This clarification is consistent with how the staff has applied the rule to date, and thus also does not make any substantive changes to the scope of IM-2210-6.

## 2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>5</sup> which requires, among other things, NASD rules to 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 clarifying the filing requirements for communications concerning

---

<sup>5</sup> 15 U.S.C. 78o-3(b)(6).

investment analysis tools will eliminate confusion regarding certain provisions of Rule 2210 and IM-2210-6.

**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**

Because the foregoing proposed rule change does not:

(i) significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>6</sup> and Rule 19b-4(f)(6) thereunder.<sup>7</sup> As required under Rule 19b-4(f)(6)(iii),<sup>8</sup> NASD provided the Commission with written notice of NASD's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the filing date of the proposed rule change.

---

<sup>6</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>7</sup> 17 CFR 240.19b-4(f)(6).

<sup>8</sup> 17 CFR 240.19b-4(f)(6)(iii).

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative for 30 days after the date of its filing.<sup>9</sup> However, Rule 19b-4(f)(6)(iii)<sup>10</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. NASD has requested that the Commission waive the 30-day operative delay contained in Rule 19b-4(f)(6)(iii)<sup>11</sup> under the Act based upon a representation that the proposed rule change does not make any substantive changes to the current filing requirements for communications concerning investment analysis tools, and will provide clarification to member firms. In light of the foregoing, the Commission believes such waiver is consistent with the protection of investors and the public interest. Accordingly, the Commission designates the proposal to be effective and operative upon filing with the Commission.<sup>12</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### **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:

---

<sup>9</sup> Id.

<sup>10</sup> Id.

<sup>11</sup> Id.

<sup>12</sup> For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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](mailto:rule-comments@sec.gov). Please include File Number SR-NASD- 2006-105 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 20549-1090.

All submissions should refer to File Number SR-NASD-2006-105. 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. 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 File Number NASD-2006-105 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.<sup>13</sup>

Nancy M. Morris

Secretary

---

<sup>13</sup> 17 CFR 200.30-3(a)(12).