

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On May 9, 2003, the Commission approved amendments to NASD Rule 2210 and the Interpretive Materials that follow NASD Rule 2210, and the creation of new NASD Rule 2211, all of which govern member communications with the public (the "Advertising Modernization Rule Change").⁴ The Advertising Modernization Rule Change becomes effective on November 3, 2003. Among other things, the Advertising Modernization Rule Change revised paragraph (c) of NASD Rule 2210, which addresses member filing requirements and NASD review procedures for member communications with the public. However, the proposed rule filing failed to include current NASD Rule 2210(c)(3), which sets forth the filing and NASD review procedures for member sales literature that includes bond mutual fund volatility ratings.

The Advertising Modernization Rule Change was initially filed with the Commission on March 15, 2000, shortly after the Commission had approved the proposed rule change that included current NASD Rule 2210(c)(3).⁵ Because of the close proximity of the Commission's approval of the bond mutual fund volatility rule and the initial filing of the Advertising Modernization Rule Change, the language of current NASD Rule 2210(c)(3) was inadvertently omitted from the Advertising Modernization Rule Filing. This omission of current NASD Rule 2210(c)(3) was unintentional, as NASD does not intend to rescind the NASD Rule 2210 provisions governing bond mutual fund volatility ratings.⁶

The purpose of this filing is to reinsert the language of current NASD Rule 2210(c)(3) concerning the filing and review requirements for member sales literature that contains bond mutual fund volatility ratings. The reinserted rule language is the same as the language used in current NASD Rule 2210(c)(3), other than certain minor, non-substantive changes. In this regard, the new language adds a heading prior

to the paragraph, uses "NASD" rather than "the Association" to refer to NASD,⁷ and clarifies that members must file sales literature that includes bond mutual fund volatility ratings at least 10 business days prior to the date of first use of the sales literature. These changes are consistent with changes made to other paragraphs of NASD Rule 2210 under the Advertising Modernization Rule Change. In addition, this rule filing renumbers paragraphs (c)(3) through (c)(9) as paragraphs (c)(4) through (c)(10), and corrects certain paragraph cross-references.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁸ which requires, among other things, that NASD's rules 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 reinserting the language of current Rule 2210(c)(3) that was inadvertently omitted from the Advertising Modernization Rule Change is consistent with the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation believes that the proposed rule change would not 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

The foregoing proposed rule change has been filed by the Exchange as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act⁹ and paragraph (f)(6) of Rule 19b-4 thereunder.¹⁰ Consequently, because the proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on

competition; and (3) does not become operative for thirty 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, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change along with a brief description and text of the proposed rule change at least five days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder. However, this proposed rule change does not alter the November 3, 2003 effective date of the Advertising Modernization Proposed Rule Change that the Commission approved on May 9, 2003.

At any time within 60 days of this filing, the Commission may summarily abrogate this proposal 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 proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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 will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by July 22, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,
Deputy Secretary.

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⁴ See Securities Exchange Act Release No. 47820 (May 9, 2003), 68 FR 27116 (May 19, 2003) (SR-NASD-00-12).

⁵ See Securities Exchange Act Release No. 42476 (February 29, 2000), 65 FR 12305 (March 8, 2000) (SR-NASD-97-89).

⁶ In this regard, the Advertising Modernization Rule Change does not amend NASD Interpretive Material 2210-5, which governs members' use of bond mutual fund volatility ratings.

⁷ NASD is in the process of amending NASD Rule 0120(j) to make clear that the term "NASD" refers collectively to NASD, NASD Regulation, Nasdaq, and NASD Dispute Resolution. See Amendment No. 1 to SR-NASD-2003-75.

⁸ 15 U.S.C. 78o-3(b)(6).

⁹ 15 U.S.C. 78s(b)(3)(A)(i).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 17 CFR 200.30-3(a)(12).