Commission stated that the critical issue is determining whether the three-second timeframe would give participants in a fully automated marketplace sufficient time to respond to a PIM broadcast, to compete, and to provide price improvement for orders, and whether electronic systems were available to ISE members that would allow them to respond to PIM broadcasts in a meaningful way within the proposed timeframe.[11] The Commission noted that the ISE is a fully electronic exchange where crowd members interact by electronic means, and that electronic systems were readily available, if not already in place, that would allow ISE members to respond to PIM broadcasts.[12]

The Commission believes that its rationale for approving the three-second PIM auction applies equally to auctions in the Facilitation and Solicited Order Mechanisms. In this regard, the Commission notes that in contrast to the PIM, which provides an interactive auction in which ISE members may receive and respond to multiple price updates within the three-second exposure period, the Facilitation and Solicited Order Mechanisms provide ISE members with only one message at the start of the auctions. Accordingly, the Commission believes that the electronic systems that would allow ISE members to receive and respond to multiple price updates during a three-second PIM auction also should allow them to respond in a meaningful way to three-second auctions in the Facilitation and Solicited Order Mechanisms.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–ISE–2004–04), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Jonathan G. Katz,

Secretary.

[FR Doc. 05–22179 Filed 11–4–05; 8:45 am]

BILLING CODE 8010–01–P

[11] *See* PIM Order, *supra* note 6.

[12] *See* PIM Order, *supra* note 6.

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52709; File No. SR–NASD–2005–117]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Seeking Permanent Approval of Rules Concerning Bond Mutual Fund Volatility Ratings Prior to Expiration of Pilot

November 1, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 28, 2005 and October 24, 2005 (Amendment No. 1), 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, II, and III below, which Items have been prepared by NASD. 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 seeking permanent approval of NASD Rule 2210(c)(3) and Interpretive Material 2210–5 concerning bond mutual fund volatility ratings prior to the expiration of the pilot on December 29, 2005.

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

* * * * *

IM–2210–5. Requirements for the Use of Bond Mutual Fund Volatility Ratings

[(This rule and Rule 2210(c)(3) will expire on December 29, 2005, unless extended or permanently approved by NASD at or before such date.)]

(a) through (c) No change.

* * * * *

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

Background and Description of NASD's Rules on Bond Mutual Fund Volatility Ratings

On February 29, 2000, the SEC approved on a pilot basis NASD Interpretive Material 2210–5, which permits members and their associated persons to include bond fund volatility ratings in supplemental sales literature (mutual fund sales material that is accompanied or preceded by a fund prospectus).[3] At that time, the SEC also approved as a pilot NASD Rule 2210(c)(3), which sets forth the filing requirements and review procedures applicable to sales literature containing bond mutual fund volatility ratings. Previously, NASD staff interpreted NASD rules to prohibit the use of bond fund volatility ratings in sales material.

IM–2210–5 permits the use of bond fund volatility ratings only in supplemental sales literature and only if certain conditions are met:

- The word ''risk'' may not be used to describe the rating.
- The rating must be the most recent available and be current to the most recent calendar quarter ended prior to use.
- The rating must be based exclusively on objective, quantifiable factors.
- The entity issuing the rating must provide to investors through a toll-free telephone number or Web site (or both) a detailed disclosure on its rating methodology.
- A disclosure statement containing all of the information required by the rule must accompany the rating. The statement must include such information as the name of the entity issuing the rating, the most current rating and the date it was issued, and a description of the rating in narrative form containing certain specified disclosures.

Rule 2210(c)(3) requires members to file for approval with NASD's Advertising Regulation Department (''Department''), at least 10 days prior to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 42476 (February 29, 2000); 65 FR 12305 (March 8, 2000) (SR–NASD–97–89).

use, bond mutual fund sales literature that includes or incorporates volatility ratings. If the Department requests changes to the material, the material must be withheld from publication or circulation until the requested changes have been made or the material has been re-filed and approved.

IM–2210–5 and Rule 2210(c)(3) initially were approved on an 18-month pilot basis that was scheduled to expire on August 31, 2001.[4] NASD subsequently renewed the pilot several times, most recently with a proposed rule change that was effective upon filing and extended the pilot provisions until December 29, 2005.[5]

Proposed Rule Change To Make Permanent IM–2110–5 and Rule 2210(c)(3)

As indicated in the SEC's original order approving IM–2210–5 and Rule 2210(c)(3) on a pilot basis and the NASD Notice to Members announcing such approval,[6] NASD requested the 18-month pilot period to consider whether:

- The rule has facilitated the dissemination of useful, understandable information to investors;
- The rule has prevented the dissemination of inappropriate or misleading information by members and associated persons;
- Additional guidance concerning the use of certain terminology may be necessary;
- The rule should apply to in-house ratings;
- The rule should apply to all investment companies; and
- Additional standards or guidance is needed to prevent investor confusion or minimize excessive variability among ratings of similar portfolios.

Due to the small number of bond volatility ratings filings received during the Rule's initial 18-month pilot, NASD extended the pilot to accumulate more data with which to evaluate the program. Ultimately, during the entire period from February 2000, when the Rule was first approved, until the present, NASD has received a total of 47 submissions from seven NASD members. In general, the filings of sales material that contained bond fund volatility ratings have met the Rule's requirements.

Based on its findings during this period, NASD has concluded that the Rule's provisions are appropriate and do not require further amendment before being made permanent. In particular, NASD believes that the Rule has facilitated the dissemination of useful and understandable information to investors and has prevented the dissemination of inappropriate or misleading information. In this regard, virtually all of the filings NASD has received under the Rule have met the Rule's requirements, and NASD is not aware of any investor complaints concerning sales material that contains volatility ratings. The level of member compliance with the Rule also suggests that members do not require additional guidance concerning the use of certain terminology in the Rule. Similarly, NASD is not aware of any concerns that investors may be confused or that there may be excessive variability among ratings or similar portfolios.

NASD also has examined the issue of whether the Rule should apply to in-house ratings. At the time the Rule was approved, NASD observed that the Rule should not apply to in-house ratings on the grounds that they are not procured for a fee, are used primarily by fund investors as an aid in distinguishing between risk levels within a family of funds, and may be calculated using different methods from those used in calculating volatility ratings.[7] NASD continues to believe that those are persuasive reasons to not apply the Rule to in-house ratings. NASD believes that in-house ratings do not raise the same concerns as third-party ratings, and thus do not merit application of the bond fund volatility ratings rule.

NASD also believes that it is unnecessary at this time to apply the rule to other types of investment companies, such as unit investment trusts. At no time throughout the extended pilot period has a member requested that the rule apply to such material, and NASD is not aware of third-party volatility ratings that are being used to assess other types of investment companies. Accordingly, NASD sees no need to expand the rule's scope in this manner. NASD has stated its willingness to re-evaluate this conclusion if comments on the proposal suggest that the Rule should be expanded to cover other types of investment companies.

NASD believes that the rule strikes an appropriate balance between the desire of some funds to advertise volatility ratings and the need to include appropriate disclosures related to those ratings in sales material. Accordingly, NASD believes that the Commission should approve the Rule, as is, on a permanent basis.

Nevertheless, NASD suggests that the Commission seek comment on whether the timeliness requirements of IM–2210–5 continue to be appropriate in light of changes to SEC Rule 482 under the Securities Act of 1933 that have occurred since the adoption of IM–2210–5 and Rule 2210(c)(3). In this regard, IM–2210–5(b)(2) requires supplemental sales literature that includes bond fund volatility ratings to present the most recently available rating that ''reflects information that, at a minimum, is current to the most recently completed calendar quarter ended prior to use.''

At the time IM–2210–5 was adopted, this standard mirrored the timeliness standard for mutual fund performance advertising under Rule 482. However, in 2003, the SEC amended Rule 482 to require mutual fund performance advertising to show performance that is current to the most recent calendar quarter ended prior to submission of an advertisement for publication, and to indicate where the reader may obtain performance that is current to the most recent month ended seven business days prior to use through a toll-free (or collect) telephone number or web site, or to present performance that meets this most recent month-end standard.[8]

Accordingly, NASD suggests that the Commission seek comment on whether the timeliness requirements of IM–2210–5(b)(2) should be modified to mirror those of amended Rule 482. More specifically, should the rule require all supplemental sales literature that includes a bond fund volatility rating either to show a rating that is current to the most recent calendar quarter ended prior to use, and disclose where the reader may find the most recent month-end rating, or provide the most recent month-end rating in the sales literature? NASD understands that rating agencies typically monitor bond funds on a monthly basis, but that it is quite rare for such agencies to revise a volatility rating on a month-to-month basis. Accordingly, NASD does not believe that it is necessary to require that volatility ratings be current as of the most recent month end given that, among other things, unlike fund

[4] *Id.*

[5] *See* Securities Exchange Act Release No. 52372 (Aug. 31, 2005); 70 FR 53405 (Sept. 8, 2005) (SR–NASD–2005–104); Securities Exchange Act Release No. 48353 (Aug. 15, 2003); 68 FR 50568 (Aug. 21, 2003) (SR–NASD–2003–126); NASD Notice to Members 03–48 (Aug. 2003); Securities Exchange Act Release No. 44737 (August 22, 2001); 66 FR 45350 (August 28, 2001) (SR–NASD–2001–49); NASD Notice to Members 01–58 (Sept. 2001).

[6] *See* Securities Exchange Act Release No. 42476 (February 29, 2000); 65 FR 12305 (March 8, 2000) (SR–NASD–97–89); NASD Notice to Members 00–23 (April 2000).

[7] *See* Securities Exchange Act Release No. 42476 (February 29, 2000); 65 FR 12305 (March 8, 2000) (SR–NASD–97–89).

[8] SEC Rule 482(g).

performance, such ratings do not frequently change once they are issued.

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. If the Commission approves the proposed rule change without material amendment, NASD is proposing that the rule change become effective immediately upon Commission approval, since the proposed rule is already in effect on a pilot basis. If the proposed rule change is approved only after material amendment that would require members to substantially modify their compliance systems or procedures, NASD will propose a later effective date to provide adequate time for such modifications.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that NASD rules must 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 making IM–2210–5 and Rule 2210(c)(3) effective on a permanent basis will allow members to continue to publish sales material that contains bond fund volatility ratings in a manner that will protect investors and serve the public interest.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) institute proceedings to determine whether such proposed rule change should be disapproved.

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. The Commission particularly urges commenters to consider the proposed rule change in light of the specific comments that the NASD urged the Commission to seek.

Specifically, the Commission requests comment on whether the timeliness requirements of IM–2210–5(b)(2) should be modified to mirror the requirements pursuant to Rule 482 under the Securities Act of 1933. In other words, should the rule require all supplemental sales literature that includes a bond fund volatility rating either to show a rating that is current to the most recently ended calendar quarter prior to use, and disclose where the reader may find the most recent month-end rating, or provide the most recent month-end rating in the sales literature?

Comments may be submitted by any of the following methods:

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*. Please include File Number SR–NASD–2005–117 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NASD–2005–117. 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, 100 F Street, NE., Washington, DC 20549. 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 the File Number SR–NASD–2005–117 and should be submitted on or before November 28, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Jonathan G. Katz,

Secretary.

[FR Doc. 05–22178 Filed 11–4–05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52712; File No. SR–NASD–2004–162]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Thereto To Establish Fee and Notice Requirements for Substitution Listing Events and Other Corporate Changes

November 1, 2005.

I. Introduction

On October 26, 2004, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish fee and notice requirements for substitution listing events and to provide additional transparency for corporate changes requiring a record-keeping fee. Nasdaq amended the proposal on May 11, 2005 [3] and August 18, 2005.[4] The proposed rule change, as amended, was

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 superseded and replaced the filing in its entirety.

[4] Amendment No. 2 superseded and replaced the amended filing in its entirety.