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

File No. SR - 2005 - 080
Amendment No. 1

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

☐ 19b-4(f)(1) ☐ 19b-4(f)(4)
☐ 19b-4(f)(2) ☐ 19b-4(f)(5)
☐ 19b-4(f)(3) ☐ 19b-4(f)(6)

Pilot ☐

Extension of Time Period for Commission Action ☐

Date Expires

Exhibit 2 Sent As Paper Document ☐

Exhibit 3 Sent As Paper Document ☐

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
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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.

Date: 11/30/2005

By: Stephanie Dumont (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.

STEPHANIE DUMONT,

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information Add Remove View	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 Add Remove View	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 Add Remove View Exhibit Sent As Paper Document ☐	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 3 - Form, Report, or Questionnaire Add Remove View Exhibit Sent As Paper Document ☐	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 4 - Marked Copies Add Remove View	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 Add Remove View	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 Add Remove View	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 June 22, 2005, NASD filed SR-NASD-2005-080 with the Securities and Exchange Commission ("SEC") to establish new Rule 2290 to address disclosures and procedures concerning the issuance of fairness opinions by members. Based upon comments from the SEC staff, NASD is filing this partial amendment to the proposed rule change as discussed in detail below. NASD also is including with this partial amendment Exhibit 4, which shows marked changes to the text of Rule 2290 as it appeared in the preceding filing.

Disclosures

NASD has amended paragraph (a) of the proposed rule change to apply to all fairness opinions that may be provided, or described, or otherwise referenced to public shareholders, not just those "that will be included in a proxy statement." This change is proposed for two reasons. First, fairness opinions may be provided to and relied upon by shareholders in other contexts, such as going private transactions, business combination transactions, and in tender offers under SEC Rule 14d-9. Second, the SEC's proxy, going private, business combination transaction, and tender offer rules do not mandate that the fairness opinion be *included* with the materials; rather, SEC rules require only that the fairness opinion be *described*. While it is common practice today for issuers to *include* a copy of the fairness opinion in proxy materials and other shareholder communications, if the application of the proposed rule change were dependent on *including* the fairness opinion, firms might seek to avoid the disclosures mandated under the proposed rule by excluding the fairness opinion in materials sent to shareholders. Accordingly, the proposed rule change states "Any member issuing a fairness opinion that may be provided, or described, or otherwise referenced to public shareholders must disclose …."

NASD also has amended paragraph (a) of the proposed rule change to clarify that the disclosures contemplated by the proposal are intended to be descriptive rather than quantitative. In particular, subparagraph (a)(1) or (2) does not require firms to specify the amount of compensation for rendering the fairness opinion, serving as an advisor or otherwise, that is contingent upon the successful completion of the transaction. For purposes of the proposed rule change, it would be sufficient for investors to be informed that such contingent compensation relationships exist. Similarly, NASD intends that the disclosures in subparagraph (a)(3) pertaining to "material relationships" also be descriptive rather than quantitative. While the rule text of subparagraph (a)(3) was modeled after Item 1015 of SEC's Regulation M-A, we do not intend to construe this section to require quantitative disclosures of the compensation from each material relationship. Again, for purposes of the proposed rule change, it will be sufficient for investors to be informed about the material relationships that exist. NASD has made minor editorial changes to reflect the nature of the intended disclosures and to distinguish the disclosures required under proposed Rule 2290 from similar disclosures required by the SEC's Regulation M-A.

NASD notes that subparagraph (a)(3) differs slightly from Item 1015 of SEC's Regulation M-A in that it applies to a material relationship between "the member and the companies" involved in the transaction, whereas Item 1015 applies only to the company

and its affiliates for which the member is rendering the fairness opinion. NASD believes that investors should be informed of material relationships between the firm authoring the fairness opinion and the companies involved on both sides of the transaction. Moreover, given the narrative (i.e., non-quantitative) focus of this subparagraph, the additional disclosures are not likely to be burdensome on firms or confusing to investors. Unlike Item 1015, however, Rule 2290 does not reach to affiliates of such companies. NASD intends to review the comment letters received by the SEC before determining whether to amend subparagraph (a)(3) to include affiliates.

In addition, NASD has amended the rule text in subparagraph (a)(4) to clarify that it intends to go beyond the standard, boilerplate-type disclosures provided in fairness opinion today. NASD has amended subparagraph (a)(4) to state that members must provide "the categories of information" that formed a substantial basis for the fairness opinion that was supplied to the member by the company requesting the opinion concerning the companies involved in the transaction and whether any such information has been independently verified by the member. Such disclosure must inform investors about the categories of information (such as projected earnings and revenues, expected cost-savings and synergies, industry trends and growth rate) that formed a substantial basis for the fairness opinion, and with respect to each category, whether the member has independently verified the information supplied by the company.

NASD also has amended subparagraph (a)(5) addressing disclosure of the use of a fairness committee. The objective of this paragraph was to inform investors of whether the fairness opinion was the product of a fairness committee. Subparagraph (a)(5) has been amended to require firms to state only "whether the fairness opinion was approved or issued by a fairness committee." Under these amendments, it is no longer necessary for such disclosures to state that procedures were followed as such procedures are required under subparagraph (b) and it was not the intent of NASD to make the procedures arising thereunder a separate disclosure event.

Procedures

NASD has amended the requirement in subparagraph (b)(2) to state "the process to determine whether the valuation analyses used in the fairness opinion are appropriate and the procedures should state the extent to which such process is determined by the type of company or transaction that is the subject of the fairness opinion." Previously, subparagraph (b)(2) addressed only the "type of company." By adding the phrase "or transaction" NASD recognizes that the choice of valuation methodologies may also depend on the type of transaction involved (e.g., the premium required in a tender offer versus a merger). In addition, subparagraph (b)(2) has been amended to require that firms' procedures address the extent to which valuation methodologies are determined by the type of company or transaction.

Finally, NASD has made editorial amendments to subparagraph (b)(3) to remove any implication that compensation received by individual officers, directors or employees, or class of such persons, is inappropriate. The revised rule text requires firms

to have a process to evaluate "whether" – and not "the degree to which" – the amount and nature of compensation from the transaction underlying the fairness opinion benefits any individual officers, directors or employees, or class of such persons, relative to the benefits to shareholders of the company, is a factor in reaching a fairness determination.

* * *

EXHIBIT 4

[New text is underlined; deleted text is in brackets]

2290. Fairness Opinions

(a) Disclosures

Any member issuing a fairness opinion that may be provided, or described, or otherwise referenced to public shareholders [that will be included in a proxy statement] must disclose, to the extent not otherwise required, in such fairness opinion:

(1) whether such member has acted as a financial advisor to any transaction that is the subject of the fairness opinion, and, if applicable, that it will receive compensation for:

(A) rendering the fairness opinion that is contingent upon the successful completion of the transaction;

(B) serving as an advisor that is contingent upon the successful completion of the transaction;

(2) whether such member will receive any other payment or compensation [it will receive] contingent upon the successful completion of the transaction;

(3) whether there is any material relationship that existed during the past two years or is mutually understood to be contemplated [and] in which any

compensation was received or is intended to be received as a result of the relationship between the member and the companies that are involved in the transaction that is the subject of the fairness opinion;

(4) the categories of information that formed a substantial basis for the fairness opinion that was supplied to the member by the company requesting the opinion concerning the companies involved in the transaction and whether any such information has been independently verified by the member; and

(5) whether the fairness opinion was approved or issued by a fairness committee [that followed procedures under this Rule designed to provide a balanced review of the transaction].

(b) Procedures

Any member issuing a fairness opinion must have procedures that address the process by which a fairness opinion is approved by a firm, including:

(1) the types of transactions and the circumstances in which the member will use a fairness committee to approve or issue a fairness opinion, and in such transactions where it uses a fairness committee:

(A) the process for selecting personnel to be on the fairness committee;

(B) the necessary qualifications of persons serving on the fairness committee; and

(C) the process to promote [ensure] a balanced review by the fairness committee, including review and approval by persons who do not serve on or advise the "deal team" to the transaction;

(2) the process to determine whether the valuation analyses used in the fairness opinion are appropriate and the procedures should state the extent to which such process is determined by [for] the type of company[ies] or transaction that is the subject of [are involved in] the [transaction] fairness opinion; and

(3) the process to evaluate whether [the degree as to which] the amount and nature of the compensation from the transaction underlying the fairness opinion benefits any individual officers, directors or employees, or class of such persons, relative to the benefits to shareholders of the company, is a factor in reaching a fairness determination.