

Proposed Rule Change by National Association of Securities Dealers
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial <input checked="" type="checkbox"/>	Amendment <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) <input type="checkbox"/>	Section 19(b)(3)(A) <input checked="" type="checkbox"/>	Section 19(b)(3)(B) <input type="checkbox"/>
Pilot <input checked="" type="checkbox"/>			Rule		
Extension of Time Period for Commission Action <input type="checkbox"/>			<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
Date Expires <input type="text"/>			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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Description
Provide a brief description of the proposed rule change (limit 250 characters).

Proposed Rule Change to Extend for an Additional Two-Year Period NASD's Authority Under the Cease and Desist Pilot Program

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	<input type="text" value="James"/>	Last Name	<input type="text" value="Wrona"/>
Title	<input type="text" value="Associate Vice President"/>		
E-mail	<input type="text" value="jim.wrona@nasd.com"/>		
Telephone	<input type="text" value="(202) 728-8270"/>	Fax	<input type="text" value="(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.

Date	<input type="text" value="05/11/2005"/>
By	<input type="text" value="Patrice Gliniecki"/>
	(Name)
	<input type="text" value="Senior Vice President and Deputy 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.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

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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

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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.

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(3) of the Securities Exchange Act of 1934 (“Act”), the National Association of Securities Dealers, Inc. (“NASD” or “Association”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to extend for an additional two-year period, to June 23, 2007, NASD’s authority under the cease and desist pilot program. At this time, NASD is not proposing any substantive changes to the rules covered by the pilot program; the only changes regard extending the pilot’s expiration date to June 23, 2007, and technical changes to certain cross-references in rules covered by the pilot program.

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

* * * * *

9556. Failure to Comply with Temporary and Permanent Cease and Desist Orders

(Rule 9556, and amendments adopted by SR-NASD-98-80 to Rule 8310, IM-8310-2(d)(1), 9120(x), 9241(c), 9290, 9311(b), 9312(b), 9360 and the Rule 9800 Series, shall expire on June 23, [2005]2007, unless extended or permanently adopted by the Association pursuant to SEC approval at or before such date.)

* * * * *

9800. Temporary Cease and Desist Orders

(The entire Rule 9800 Series, and related amendments adopted by SR-NASD-98-80 to Rule 8310, IM-8310-2(d)(1), 9120(x), 9241(c), 9290, 9311(b), 9312(b), and 9360, and by SR-NASD-2003-110 to Rule 9556, shall expire on June 23, [2005]2007, unless

extended or permanently adopted by the Association pursuant to SEC approval at or before such date.)

* * * * *

9860. Violation of Temporary Cease and Desist Orders

A Respondent who violates a temporary cease and desist order imposed under this Rule Series may have its association or membership suspended or canceled under [the] Rule 9556 [9510 Series]. The President of NASD Regulatory Policy and Oversight or the Executive Vice President for NASD Regulatory Policy and Programs must authorize the initiation of any such proceeding in writing.

* * * * *

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by Action of the Executive Committee of the Board of Governors of NASD on May 5, 2005, which authorized the filing of the rule change with the Commission. Counsel for The Nasdaq Stock Market and NASD Dispute Resolution were provided an opportunity to consult with respect to the proposed rule change, pursuant to the Plan of Allocation and Delegation of Functions by NASD to its Subsidiaries. No other action by NASD is necessary for the filing of the proposed rule change. Section 1(a)(ii) of Article VII of the NASD By-Laws permits the Board of Governors of NASD to adopt amendments to NASD Rules without recourse to the membership for approval.

The proposed rule change will become effective upon filing, will be operative on June 23, 2005, and will expire on June 23, 2007, unless extended or permanently adopted by NASD pursuant to Commission approval at or before such date.

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

(a) Purpose

In May 2003, the Commission approved, on a two-year pilot basis, a rule change that gave NASD authority to issue temporary cease and desist orders ("TCDOs") and made explicit NASD's ability to impose permanent cease and desist orders as a remedy in disciplinary cases.¹ The pilot program also gave NASD authority to enforce cease and desist orders. The pilot program expires on June 23, 2005. NASD is proposing a rule change to extend the pilot program for an additional two-year period, to June 23, 2007. Such an extension will enable NASD to continue to issue and enforce temporary and permanent cease and desist orders. NASD's authority to issue TCDOs will expire after the additional two-year period unless the pilot program is further extended or adopted on a permanent basis with Commission approval.

NASD currently is seeking only to extend the pilot program period and make technical changes to certain cross-references in rules covered by the pilot program. NASD is not proposing any substantive changes to the rules covered by the pilot program at this time. Since the pilot program was first approved in 2003, NASD has issued only one TCDO and one permanent cease and desist order (in the same case, which is described below). Consequently, NASD believes that additional time is needed to make

¹ Exchange Act Release No. 47925 (May 23, 2003) (File No. SR-NASD-98-80), 68 Federal Register 33548 (June 4, 2003).

a meaningful determination about whether certain specific provisions eventually should be modified and, if so, to what extent.

In the one case initiated under the pilot program, NASD's Department of Enforcement ("Enforcement") alleged that the member in question was engaged in widespread fraud that included, among other things, making material misrepresentations and omissions in connection with the private offering of its own stock, effecting unauthorized transactions and using customer funds improperly. Enforcement showed that not only was the member attempting to continue the fraudulent offering, it also was funneling money and assets to a non-NASD member affiliate. Enforcement alleged, and a hearing panel found, that a TCDO was necessary because the member's continuation of the misconduct was likely to result in further dissipation or conversion of assets and other significant harm to investors before the completion of the underlying disciplinary proceeding. After the hearing panel issued a permanent cease and desist order following a full disciplinary hearing, the parties settled the case, resulting in the expulsion of the member, the bar of its owner and the imposition of almost \$12 million in fines and restitution.

The proposed extension of the pilot program for an additional two years will provide NASD with a mechanism to continue to take appropriate remedial action against a member or an associated person who has engaged (or is engaging) in violative conduct that could cause continuing harm to the investing public if not addressed expeditiously. At the same time, the pilot program continues to contain numerous procedural checks and safeguards to ensure that cease and desist proceedings are used prudently, sparingly and fairly. In addition, the extension of the pilot program will allow NASD to analyze more

thoroughly the pilot program's overall effectiveness. Accordingly, NASD believes it is appropriate to extend the pilot period regarding cease and desist orders for two years.

The proposed rule change will become effective upon filing, will be operative on June 23, 2005, and will expire on June 23, 2007, unless extended or permanently adopted by NASD pursuant to Commission approval at or before such date.

(b) 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's 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. The proposed rule change also is consistent with the provisions of Section 15A(b)(7) of the Act, which provides that NASD members, or persons associated with its members, are appropriately disciplined for violations of any provisions of the Act or NASD's rules. The extension of the pilot program is consistent with NASD's obligations under the Act because cease and desist orders are designed to stop violative conduct that is likely to cause dissipation or conversion of assets or other significant harm to investors.

4. 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.

5. 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.

6. **Extension of Time Period for Commission Action**

Not applicable.

7. **Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)**

The proposed rule change, extending the cease and desist pilot program and making technical changes to certain cross-references in rules covered by the pilot program, is effective upon filing pursuant to Section 19(b)(3) of the Act and Rule 19b-4(f)(6) thereunder,² in that the proposal does not significantly affect the protection of investors or the public interest, impose any significant burden on competition or become operative for 30 days after filing. In accordance with Rule 19b-4, NASD submitted written notice of its intent to file the proposed rule change extending the pilot, along with a brief description and text of the proposal, at least five business days prior to the date of filing. NASD proposes to make the proposed rule change operative on June 23, 2005.

8. **Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission**

Not applicable.

9. **Exhibits**

Exhibit 1: Completed notice of proposed rule change for publication in the Federal Register.

² 17 CFR § 240.19b-4(f)(6).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-NASD-2005-061)

SELF-REGULATORY ORGANIZATIONS

Proposed Rule Change by National Association of Securities Dealers, Inc. To Extend for an Additional Two-Year Period NASD's Authority Under the Cease and Desist Pilot Program

Pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on , the National Association of Securities Dealers, Inc. ("NASD" or "Association") 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. NASD has designated the proposed rule change as constituting a "non-controversial" rule change pursuant to Rule 19b-4(f)(6) under the Act,³ 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 a rule change to extend for an additional two-year period, to June 23, 2007, NASD's authority under the cease and desist pilot program. At this time, NASD is not proposing any substantive changes to the rules covered by the pilot

¹ 15 U.S.C. 78s(b)(3).

² 17 CFR § 240.19b-4.

³ 17 CFR § 240.19b-4.

program; the only changes regard extending the pilot's expiration date to June 23, 2007, and technical changes to certain cross-references in rules covered by the pilot program.

Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.⁴

* * * * *

9556. Failure to Comply with Temporary and Permanent Cease and Desist Orders

(Rule 9556, and amendments adopted by SR-NASD-98-80 to Rule 8310, IM-8310-2(d)(1), 9120(x), 9241(c), 9290, 9311(b), 9312(b), 9360 and the Rule 9800 Series, shall expire on June 23, [2005]2007, unless extended or permanently adopted by the Association pursuant to SEC approval at or before such date.)

* * * * *

9800. Temporary Cease and Desist Orders

(The entire Rule 9800 Series, and related amendments adopted by SR-NASD-98-80 to Rule 8310, IM-8310-2(d)(1), 9120(x), 9241(c), 9290, 9311(b), 9312(b), and 9360, and by SR-NASD-2003-110 to Rule 9556, shall expire on June 23, [2005]2007, unless extended or permanently adopted by the Association pursuant to SEC approval at or before such date.)

* * * * *

⁴ The rule language contained in parentheses in Rules 9556 and 9800 is, and will continue to be, italicized in NASD's manual. However, the existing rule language in the parentheses that will not be modified by NASD's proposed rule change is not italicized for purposes of this Federal Register publication so that it does not appear as proposed new text.

9860. Violation of Temporary Cease and Desist Orders

A Respondent who violates a temporary cease and desist order imposed under this Rule Series may have its association or membership suspended or canceled under [the] Rule 9556 [9510 Series]. The President of NASD Regulatory Policy and Oversight or the Executive Vice President for NASD Regulatory Policy and Programs must authorize the initiation of any such proceeding in writing.

* * * * *

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 and discussed any comments it received on 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

In May 2003, the Commission approved, on a two-year pilot basis, a rule change that gave NASD authority to issue temporary cease and desist orders ("TCDOs") and made explicit NASD's ability to impose permanent cease and desist orders as a remedy in disciplinary cases.⁵ The pilot program also gave NASD authority to enforce cease and desist orders. The pilot program expires on June 23, 2005. NASD is proposing a rule change to extend the pilot program for an additional two-year period, to June 23, 2007.

⁵ Exchange Act Release No. 47925 (May 23, 2003) (File No. SR-NASD-98-80), 68 Federal Register 33548 (June 4, 2003).

Such an extension will enable NASD to continue to issue and enforce temporary and permanent cease and desist orders. NASD's authority to issue TCDOs will expire after the additional two-year period unless the pilot program is further extended or adopted on a permanent basis with Commission approval.

NASD currently is seeking only to extend the pilot program period and make technical changes to certain cross-references in rules covered by the pilot program. NASD is not proposing any substantive changes to the rules covered by the pilot program at this time. Since the pilot program was first approved in 2003, NASD has issued only one TCDO and one permanent cease and desist order (in the same case, which is described below). Consequently, NASD believes that additional time is needed to make a meaningful determination about whether certain specific provisions eventually should be modified and, if so, to what extent.

In the one case initiated under the pilot program, NASD's Department of Enforcement ("Enforcement") alleged that the member in question was engaged in widespread fraud that included, among other things, making material misrepresentations and omissions in connection with the private offering of its own stock, effecting unauthorized transactions and using customer funds improperly. Enforcement showed that not only was the member attempting to continue the fraudulent offering, it also was funneling money and assets to a non-NASD member affiliate. Enforcement alleged, and a hearing panel found, that a TCDO was necessary because the member's continuation of the misconduct was likely to result in further dissipation or conversion of assets and other significant harm to investors before the completion of the underlying disciplinary proceeding. After the hearing panel issued a permanent cease and desist order following

a full disciplinary hearing, the parties settled the case, resulting in the expulsion of the member, the bar of its owner and the imposition of almost \$12 million in fines and restitution.

The proposed extension of the pilot program for an additional two years will provide NASD with a mechanism to continue to take appropriate remedial action against a member or an associated person who has engaged (or is engaging) in violative conduct that could cause continuing harm to the investing public if not addressed expeditiously. At the same time, the pilot program continues to contain numerous procedural checks and safeguards to ensure that cease and desist proceedings are used prudently, sparingly and fairly. In addition, the extension of the pilot program will allow NASD to analyze more thoroughly the pilot program's overall effectiveness. Accordingly, NASD believes it is appropriate to extend the pilot period regarding cease and desist orders for two years.

The proposed rule change will become effective upon filing, will be operative on June 23, 2005, and will expire on June 23, 2007, unless extended or permanently adopted by NASD pursuant to Commission approval at or before such date.

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's 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. The proposed rule change also is consistent with the provisions of Section 15A(b)(7) of the Act, which provides that NASD members, or persons associated with its members, are appropriately disciplined for violations of any provisions of the Act or

NASD's rules. The extension of the pilot program is consistent with NASD's obligations under the Act because cease and desist orders are designed to stop violative conduct that is likely to cause dissipation or conversion of assets or other significant harm to investors.

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

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) because it does not:

- (i) significantly affect the protection of investors or the public interest;
- (ii) impose any significant burden on competition; or
- (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate.

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. In accordance with Rule 19b-4, NASD submitted written notice of its intent to file the proposed rule change extending the pilot, along with a brief description and text of the proposal, at least five

business days prior to the date of filing. NASD proposes to make the proposed rule change operative on June 23, 2005. The rule change will expire on June 23, 2007, unless extended or permanently adopted by NASD pursuant to Commission approval at or before such date.

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:

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-2005-061 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-NASD-2005-061. 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, 450 Fifth Street, NW, 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-2005-061 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.⁶

Margaret H. McFarland
Deputy Secretary

⁶ 17 CFR 200.30-3(a)(12).