

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

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

<input type="checkbox"/> Exhibit 2 Sent As Paper Document	<input type="checkbox"/> Exhibit 3 Sent As Paper Document
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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	<input type="text" value="Andrea"/>	Last Name	<input type="text" value="Orr"/>
Title	<input type="text" value="Assistant General Counsel"/>		
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Telephone	<input type="text" value="(202) 728-8156"/>	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="09/13/2005"/>
By	<input type="text" value="Stephanie Dumont"/>
	(Name)
	<input type="text" value="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.

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)(1) of the Securities Exchange Act of 1934 (“Act”), the National Association of Securities Dealers, Inc. (“NASD”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) Amendment No. 2 to SR-NASD-2005-089, a proposed rule change to NASD’s Plan of Allocation and Delegation of Functions by NASD to Subsidiaries (“Delegation Plan”) and certain NASD rules to reflect NASD’s direct authority for the activities related to or in support of trading in over-the-counter (“OTC”) equity securities,¹ including, but not limited to, the OTC Bulletin Board (“OTCBB”), rather than the current delegation of such authority to The Nasdaq Stock Market, Inc. (“Nasdaq”). The purpose of this Amendment No. 2 is to address the comment letter received by the Commission in response to the publication of the proposed rule change in the Federal Register and to conform certain rule text in the proposed rule change to reflect amendments to such rules.²

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

* * * * *

**PLAN OF ALLOCATION AND DELEGATION OF FUNCTIONS BY NASD TO
SUBSIDIARIES**

¹ The term “OTC equity securities” herein refers to OTC Equity Securities as defined in the Rule 6600 Series, including, but not limited to, OTC Bulletin Board securities.

² See Exchange Act Release No. 52119 (July 25, 2005), 70 FR 43918 (July 9, 2005).

I. NASD, Inc.

The NASD, Inc. (referenced as "NASD"), the Registered Section 15A Association, is the parent company of the [wholly-owned] Subsidiaries NASD Regulation, Inc. (referenced individually as "NASD Regulation"), The Nasdaq Stock Market, Inc. (referenced individually as "Nasdaq"), and NASD Dispute Resolution, Inc. (referenced individually as "NASD Dispute Resolution") (referenced collectively as the "Subsidiaries"). The term "Association" shall refer to the NASD and the Subsidiaries collectively.

A. [Governors, Directors and Committee Members]Other Defined Terms - The terms "Industry Governors," "Non-Industry Governors," "Public Governors," "Industry Directors," "Non-Industry Directors," "Public Directors," "Industry committee members," "Non-Industry committee members," and "Public committee members," as used herein, shall have the meanings set forth in the By-Laws of the NASD, NASD Regulation and Nasdaq, as applicable. For purposes of Section III herein, the term "other markets or systems" does not include markets or systems relating to the trading of OTC Equity Securities as defined in the Rule 6600 Series, including, but not limited to, OTC Bulletin Board securities.

B. through E. No change.

II. NASD Regulation, Inc.

A. Delegation of Functions and Authority:

1. Subject to Section I.B.11, the NASD hereby delegates to NASD Regulation and NASD Regulation assumes the following responsibilities and functions as a registered securities association:

a. through s. No change.

t. To develop and adopt rule changes to establish trading practices with respect to OTC Equity Securities, as defined in the Rule 6600 Series, including, but not limited to, OTC Bulletin Board securities.

B. No change.

C. Supplemental Delegation Regarding Committees

1. No change.

2. [Operations] Uniform Practice Code Committee

a. The [Operations] Uniform Practice Code Committee shall have the following functions:

i. through iii. No change.

b. The NASD Regulation Board shall appoint the [Operations] Uniform Practice Code Committee by resolution. The [Operations] Uniform Practice Code Committee shall have not more than 50 percent of its members directly engaged in market-making activity or employed by a member firm whose revenues from market-making activity exceed ten percent of its total revenues.

III. Nasdaq

A. Delegation of Functions and Authority

1. Subject to Section I.B.11., the NASD hereby delegates to Nasdaq and Nasdaq assumes the following responsibilities and functions as a registered securities association:

a. To operate The Nasdaq Stock Market, automated systems supporting The Nasdaq Stock Market, and other markets or systems[for non-Nasdaq securities].

b. and c. No change.

d. To develop and adopt rule changes (i) applicable to the collection, processing, and dissemination of quotation and transaction information for securities traded on The Nasdaq Stock Market, on other markets operated by The Nasdaq Stock Market, and in the third market for securities listed on a registered exchange, [and in the over-the-counter market,](ii) for Nasdaq-operated trading systems for these securities, and (iii) establishing trading practices with respect to these securities.

e. through o. No change.

2. No change.

B. and C. No change.

IV. and V. No change.

* * * * *

6545. Trading and Quotation Halt in OTCBB-Eligible Securities

(a) Authority for Initiating a Trading and Quotation Halt

In circumstances in which it is necessary to protect investors and the public interest, [Nasdaq]NASD may direct members, pursuant to the procedures set forth in paragraph (b), to halt trading and quotations in the over-the-counter ("OTC") market of a security or an American Depository Receipt ("ADR") that is included in the OTC Bulletin Board ("OTCBB") if:

(1) the OTCBB security or the security underlying the OTCBB ADR is listed on or registered with a foreign securities exchange or market, and the foreign securities exchange, market, or regulatory authority overseeing such issuer, exchange, or market, halts trading in such security for regulatory reasons because of public interest concerns ("Foreign Regulatory Halt"); provided, however, that [Nasdaq]NASD will not impose a trading and quotation halt if the Foreign Regulatory Halt was imposed solely for material news, a regulatory filing deficiency, or operational reasons; or

(2) through (3) No change.

(b) Procedure for Initiating a Trading and Quotation Halt

(1) When a halt is initiated under subparagraph (a)(1) of this rule, upon receipt of information from a foreign securities exchange or market on which the OTCBB security or the security underlying the OTCBB ADR is listed or registered, or from a regulatory authority overseeing such issuer, exchange, or market, [Nasdaq]NASD will promptly evaluate the information and determine whether a trading and quotation halt in the OTCBB security is appropriate.

(2) Should [Nasdaq]NASD determine that a basis exists under this rule for initiating a trading and quotation halt, the commencement of the trading and quotation halt will be effective simultaneous with the issuance of appropriate public notice.

(3) Trading and quotations in the OTC market may resume when [Nasdaq]NASD determines that the basis for the halt no longer exists, or when five business days have elapsed from the date [Nasdaq]NASD initiated the trading and

quotation halt in the security, whichever occurs first. [Nasdaq]NASD shall disseminate appropriate public notice that the trading and quotation halt is no longer in effect.

(c) No change.

* * * * *

6620. Transaction Reporting

(a) through (e) No change.

(f) Reporting Cancelled Trades

(1) Obligation and Party Responsible for Reporting Cancelled Trades

With the exception of trades cancelled [by Nasdaq staff] in accordance with Rule 11890, members shall report to the Nasdaq Market Center the cancellation of any trade previously submitted to the Nasdaq Market Center. The member responsible under Rule 6620 for submitting the original trade report shall submit the cancellation report in accordance with the procedures set forth in paragraph (f)(2). For trades executed through a Nasdaq system that automatically reports trades to the Nasdaq Market Center, the member that would have been required by Rule 6620 to report the trade (but for the trade being reported automatically by the Nasdaq system) shall submit the cancellation report in accordance with the procedures set forth in paragraph (f)(2).

(2) No change.

* * * * *

7010. System Services

(a) through (o) No change.

(p) Historical Research and Administrative Reports

(1) and (2) No change.

(3) The charge to be paid by the purchaser of an Historical Research Report regarding an OTC Bulletin Board security or other OTC security through the OTCBB.com website shall be determined in accordance with the following schedule:

A. No change.

B. No change.

C. [Nasdaq]NASD may, in its discretion, choose to make a report that purchasers wish to obtain every trading day available on a subscription discount basis. In such cases, the price for a subscription to receive a report every trading day in a month shall be the applicable rate to receive the report for a day times 20; the price for a subscription to receive the report for every trading day in a quarter shall be the applicable rate to receive the report every day times 60; and the price for a subscription to receive a report every trading day in a year shall be the applicable rate to receive the report for a day times 240.

D. No change.

(4) No change.

(q) through (v) No change.

* * * * *

11120. Definitions

(a) Committee

The term "Committee" as used in this Code, unless the context otherwise requires, shall mean the Committee delegated the authority to administer this Code by the Board of Governors.*

(b) through (g) No change.

* The Board of Governors has so designated the [Association's Operations] NASD's Uniform Practice Code Committee.

* * * * *

11890. Clearly Erroneous Transactions

(a) No change.

(b) Procedures for Reviewing Transactions on NASD's or Nasdaq's Own

Motion

(1) In the event of (i) a disruption or malfunction in the use or operation of any quotation, execution, communication, or trade reporting system owned or operated by Nasdaq and approved by the Commission, or (ii) extraordinary market conditions or other circumstances in which the nullification or modification of transactions may be necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest, the President of Nasdaq or any Executive Vice President designated by the President may, on his or her own motion, review any transaction in Nasdaq or exchange-listed securities arising out of or reported through any such quotation, execution, communication, or trade reporting system, including transactions entered into by a member of a UTP Exchange through the use or operation of such a system, but excluding transactions that are entered into

through, or reported to, a UTP Exchange. A Nasdaq officer acting pursuant to this subsection may declare any such transaction null and void or modify the terms of any such transaction if the officer determines that (i) the transaction is clearly erroneous, or (ii) such actions are necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest; provided, however, that[, in the absence of extraordinary circumstances,] the officer must take action pursuant to this subsection within thirty (30) minutes of detection of the transaction[, but in no event later than] except in the event of extraordinary circumstances, in which event the officer must take action by 3:00 p.m., Eastern Time, on the next trading day following the date of the [trade] transaction at issue.

(2) In the event of (i) a disruption or malfunction in the use or operation of any quotation, communication, or trade reporting system owned or operated by NASD or its subsidiaries and approved by the Commission, or (ii) extraordinary market conditions in which the nullification or modification of transactions may be necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest, an Executive Vice President of NASD's Market Regulation Department or an Executive Vice President of NASD's Transparency Services Department may, on his or her own motion, review any transaction in an OTC equity security, as defined in Rule 6610, arising out of or reported through any such quotation, communication, or trade reporting system. An NASD officer acting pursuant to this subsection may declare any such transaction null and void or modify the terms of any such transaction if the officer determines that (i) the transaction is clearly erroneous, or (ii) such actions are necessary for the maintenance of a fair and

orderly market or the protection of investors and the public interest; provided, however, that the officer must take action pursuant to this subsection within thirty (30) minutes of detection of the transaction except in the event of extraordinary circumstances, in which event the officer must take action by 3:00 p.m., Eastern Time, on the next trading day following the date of the transaction at issue.

(c) Review by the Market Operations Review Committee (“MORC”) or the Uniform Practice Code (“UPC”) Committee

(1) Subject to the limitations described in paragraph (c)(2), a member, member of a UTP Exchange, or person associated with any such member may appeal a determination made under paragraph (a) to the MORC. A member, member of a UTP Exchange, or person associated with any such member may appeal a determination made under paragraph (b) (1) to the MORC, or a determination made under paragraph (b)(2) to the UPC Committee, unless the officer making the determination also determines that the number of the affected transactions is such that immediate finality is necessary to maintain a fair and orderly market and to protect investors and the public interest. An appeal must be made in writing, and must be received by Nasdaq or NASD, as applicable, within thirty (30) minutes after the person making the appeal is given the notification of the determination being appealed, except that if Nasdaq or NASD notifies the parties of action taken pursuant to paragraph (b) after 4:00 p.m., the appeal must be received by [Nasdaq by] 9:30 a.m. the next trading day. Once a written appeal has been received, the counterparty to the trade that is the subject of the appeal will be notified of the appeal and both parties shall be able to submit any additional supporting written information up until

the time the appeal is considered by the appropriate Committee[MORC]. Either party to a disputed trade may request the written information provided by the other party during the appeal process. An appeal [to the MORC] shall not operate as a stay of the determination being appealed, and the scope of the appeal shall be limited to trades to which the person making the appeal is a party. Subject to the limitations described in paragraph (c)(2), once a party has appealed a determination to the appropriate Committee[MORC], the determination shall be reviewed and a decision rendered, unless (i) both parties to the transaction agree to withdraw the appeal prior to the time a decision is rendered[by the MORC], or (ii) the party filing the appeal withdraws its appeal prior to the notification of counterparties under this paragraph (c)(1). Upon consideration of the record, and after such hearings as it may in its discretion order, the MORC or the UPC Committee, pursuant to the standards set forth in this rule, shall affirm, modify, reverse, or remand the determination.

(2) If a Nasdaq officer determines under paragraph (a)(2)(C) that a transaction is not eligible for review, a party appealing such determination must allege in its appeal a mistake of material fact upon which it believes the officer's determination was based. If the MORC concludes that an appeal of such a determination does not allege a mistake of material fact, the determination shall become final and binding. If the MORC concludes that an appeal of such a determination alleges a mistake of material fact, Nasdaq shall notify the counterparty to the transaction and the determination shall be reviewed by the MORC as provided under paragraph (c)(1). If the MORC then finds that the determination was based on a

mistake of material fact, the MORC shall remand the matter for adjudication under paragraph (a); otherwise, the determination shall become final and binding.

(3) The decision of [the MORC] a Committee pursuant to an appeal, or a determination by a Nasdaq or NASD officer that is not appealed, shall be final and binding upon all parties and shall constitute final [Association] action on the matter in issue. Any determination by a Nasdaq or NASD officer pursuant to paragraph (a) or (b) or any decision by [the MORC]a Committee pursuant to paragraph (c) shall be rendered without prejudice as to the rights of the parties to the transaction to submit their dispute to arbitration.

(d) Communications

(1) All materials submitted [to Nasdaq or the MORC]pursuant to this Rule shall be submitted within the time parameters specified herein via such telecommunications procedures as Nasdaq or NASD may announce from time to time in an NASD Notice to Members or Nasdaq Head Trader Alert, as applicable. Materials shall be deemed received at the time indicated by the telecommunications equipment (e.g., facsimile machine or computer) receiving the materials. Nasdaq and NASD, in [its]their sole and absolute discretion, reserve[s] the right to reject or accept any material that is not received within the time parameters specified herein.

(2) Nasdaq or NASD shall provide affected parties with prompt notice of determinations under this Rule via facsimile machine, electronic mail, or telephone (including voicemail); provided, however, that if an officer nullifies or modifies a large number of transactions pursuant to paragraph (b), Nasdaq or NASD may instead provide notice to parties via Nasdaq telecommunications protocols, a press release, or

any other method reasonably expected to provide rapid notice to many market participants.

IM-11890-1. Refusal to Abide by Rulings [of a Nasdaq Officer or the MORC]

It shall be considered conduct inconsistent with just and equitable principles of trade for any member to refuse to take any action that is necessary to effectuate a final decision of a Nasdaq or NASD officer or the MORC or the UPC Committee under Rule 11890.

IM-11890-2. Review by Panels of the MORC or the UPC Committee

For purposes of Rule 11890 and other NASD rules that permit review of Nasdaq or NASD decisions by the MORC or the UPC Committee, respectively, a decision of the MORC or the UPC Committee may be rendered by a panel of [the MORC] that Committee. In the case of a review of a determination by a Nasdaq officer under Rule 11890(a)(2)(C) that a transaction is not eligible for review (including a review of the sufficiency of allegations contained in an appeal regarding such a determination), the panel may consist of one or more members of the MORC, provided that no more than 50 percent of the members of any panel are directly engaged in market making activity or employed by a member whose revenues from market making activity exceed ten percent of its total revenues. In all other cases, the panel shall consist of three or more members of [the MORC]that Committee, provided that no more than 50 percent of the members of any panel are directly engaged in market making activity or employed by a member firm whose revenues from market making activity exceed ten percent of its total revenues.

* * * * *

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by the Board of Governors of NASD at its meeting on November 18, 2004, which authorized the filing of the rule change with the SEC. 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 be effective on October 1, 2005, assuming SEC approval prior to that date.

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

(a) Purpose

Rule Filing History

On July 19, 2005, NASD filed with the Commission proposed rule change SR-NASD-2005-089, proposing amendments to NASD's Delegation Plan and certain NASD rules. On July 22, 2005, NASD filed with the Commission Amendment No. 1 to SR-NASD-2005-089 ("Amendment No. 1"), which proposed to amend the text of Rule 6620(f), among other technical changes. On July 25, 2005, the Commission published for comment the proposed rule change in the Federal Register. The SEC received one comment letter in response to the Federal Register publication. On July 27, 2005, the SEC approved SR-NASD-2004-009, which, among other things, amended the text of Rule 11890 and Interpretive Material (IM)-11890 and became effective on July 27, 2005.

Given the SEC's approval of SR-NASD-2004-009 and the comment letter received in response to the publication of the proposed rule change in the Federal Register, NASD is

filing this Amendment No. 2 to SR-NASD-2005-089 (“Amendment No. 2”) to conform the rule text in the proposed rule change to reflect the amendments in SR-NASD-2004-009 and to respond to the comment letter received.

Proposal

As described in the original filing and Amendment No. 1, pursuant to the Delegation Plan, activities related to or in support of the trading in OTC equity securities, including, but not limited to, operation of the OTCBB³ (collectively referred to herein as “OTC equity operations”), have been delegated to Nasdaq. NASD is proposing to assume direct authority for OTC equities operations rather than delegate it to Nasdaq and delegate to NASD Regulation rulemaking authority related to trading practices for OTC equity securities.

In furtherance of this transition, NASD also is proposing to: (1) transfer trading and quotation halt authority for OTCBB-eligible securities from Nasdaq to NASD; (2) conform the language governing reporting cancelled trades to reflect the proposed changes in Rule 11890 relating to NASD’s ability to nullify or modify transactions in OTC equity securities; (3) transfer the authority to set certain fees in this area from Nasdaq to NASD; and (4) transfer from Nasdaq to NASD the ability to nullify or modify a transaction in an OTC equity security due to a disruption or malfunction in the use or operation of any quotation, communication, or trade reporting system or other extraordinary market conditions.

³ The OTCBB provides an electronic quotation medium for subscribing members to enter, update, and display quotations in individual securities on a real-time basis. Such quotation entries may consist of a priced bid and/or offer; an unpriced indication of interest; or a bid/offer accompanied by a modifier to reflect unsolicited customer interest. The OTCBB is not an issuer listing service and therefore does not maintain a relationship with quoted issuers or impose quantitative listing standards as do Nasdaq and the exchanges. To be eligible for quotation on the OTCBB, issuers must be current in their filings with the SEC or applicable regulatory authority.

Comments to the Proposed Rule Change

The Commission received one comment letter in response to the publication of the proposed rule change in the Federal Register.⁴ The commenter supports the proposal, but argues that further rulemaking related to the OTC market is required. Specifically, the commenter suggests that various rule changes and guidance are necessary to reflect the current state of the OTC market, including additional dissemination of certain trade and volume data, expanded trade halt and clearly erroneous authority, and limitations on member conduct relating to unlawful distributions of securities by customers

Because the changes recommended by the commenter are outside the scope of the proposed changes that are part of this rule filing, NASD is not responding to these recommendations specifically herein. NASD will review and analyze these recommendations in the same manner in which it would consider any requests for rulemaking, and, based on such review and analysis, will determine whether further action on these recommendations is appropriate.

Conforming and Clarifying Changes

NASD also is making certain conforming changes to the text of Rule 11890 and Interpretive Material (IM)-11890. As noted above, after the proposed rule change was filed with the Commission, the SEC approved SR-NASD-2004-009, which, among other things, proposed amendments to Rule 11890 and IM-11890.⁵ The proposed changes in SR-NASD-

⁴ See Letter dated August 29, 2005 from R. Cromwell Coulson, Chief Executive Officer, Pink Sheets LLC.

⁵ See Exchange Act Release No. 52141 (July 27, 2005), 70 FR 44709 (August 3, 2005).

2004-009 became effective on July 27, 2005. Given the SEC's approval of SR-NASD-2004-009, NASD is proposing to amend Rule 11890 and IM-11890 to conform the rule text in the proposed rule change to reflect those amendments.

NASD also is amending Rule 11890(b)(1) and (2) to clarify the time limitations associated with NASD and Nasdaq's clearly erroneous authority. Specifically, NASD is clarifying that the officer must take action pursuant to the authority under Rule 11890(b)(1) and (2) within thirty (30) minutes of detection of the transaction except in the event of extraordinary circumstances, in which event the officer must take action by 3:00 p.m., Eastern Time, on the next trading day following the date of the transaction at issue.

The proposed rule change will be effective on October 1, 2005, assuming SEC approval prior to that 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 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 the proposed rule changes will clarify the NASD Delegation Plan and rules to reflect NASD's direct responsibility for OTC equity operations.

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 on the proposed rule change were solicited by the Commission in response to SR-NASD-2005-089, which proposed amendments to NASD's Delegation Plan and certain NASD rules. The Commission received one comment letter in response to the Federal Register publication of SR-NASD-2005-089. The comments are summarized above.

6. Extension of Time Period for Commission Action

NASD does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.

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

NASD requests the Commission to find good cause pursuant to Section 19(b)(2) of the Act for approving the proposed rule change prior to the 30th day after its publication in the Federal Register.

Because NASD believes that the proposed changes in Amendment No.2 are technical in nature, NASD requests the Commission to accelerate the effectiveness of the proposed rule change prior to the 30th day after its publication in the Federal Register.

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.

Exhibit 4. Exhibit 4 shows the full text of rule change marking changes from Amendment No. 1, with Amendment No. 1 changes shown as if adopted, and the new

language in this Amendment No. 2 marked to show additions and deletions.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-NASD-2005-089)

SELF-REGULATORY ORGANIZATIONS

Proposed Rule Change by National Association of Securities Dealers, Inc.
Relating to NASD's Direct Authority for the Activities Related to or in Support of
Trading in Over-the-Counter Equity Securities

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 , the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") Amendment No. 2 to the proposed rule change³ 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. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to amend NASD's Plan of Allocation and Delegation of Functions by NASD to Subsidiaries ("Delegation Plan") and certain NASD rules to reflect NASD's direct authority for the activities related to or in support of trading in

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ On July 19, 2005, NASD filed SR-NASD-2005-098 with the Commission. On July 22, 2005, NASD filed with the Commission Amendment No. 1 to SR-NASD-2005-089 that made certain technical changes, among other things.

over-the-counter (“OTC”) equity securities,⁴ including, but not limited to, the OTC Bulletin Board (“OTCBB”), rather than the current delegation of such authority to The Nasdaq Stock Market, Inc. (“Nasdaq”).

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

* * * * *

PLAN OF ALLOCATION AND DELEGATION OF FUNCTIONS BY NASD TO SUBSIDIARIES

I. NASD, Inc.

The NASD, Inc. (referenced as "NASD"), the Registered Section 15A Association, is the parent company of the [wholly-owned] Subsidiaries NASD Regulation, Inc. (referenced individually as "NASD Regulation"), The Nasdaq Stock Market, Inc. (referenced individually as "Nasdaq"), and NASD Dispute Resolution, Inc. (referenced individually as "NASD Dispute Resolution") (referenced collectively as the "Subsidiaries"). The term "Association" shall refer to the NASD and the Subsidiaries collectively.

A. [Governors, Directors and Committee Members]Other Defined Terms - The terms "Industry Governors," "Non-Industry Governors," "Public Governors," "Industry Directors," "Non-Industry Directors," "Public Directors," "Industry committee members," "Non-Industry committee members," and "Public committee members," as used herein, shall have the meanings set forth in the By-Laws of the NASD, NASD Regulation and

⁴ The term “OTC equity securities” herein refers to OTC Equity Securities as defined in the Rule 6600 Series, including, but not limited to, OTC Bulletin Board securities.

Nasdaq, as applicable. For purposes of Section III herein, the term “other markets or systems” does not include markets or systems relating to the trading of OTC Equity Securities as defined in the Rule 6600 Series, including, but not limited to, OTC Bulletin Board securities.

B. through E. No change.

II. NASD Regulation, Inc.

A. Delegation of Functions and Authority:

1. Subject to Section I.B.11, the NASD hereby delegates to NASD Regulation and NASD Regulation assumes the following responsibilities and functions as a registered securities association:

a. through s. No change.

t. To develop and adopt rule changes to establish trading practices with respect to OTC Equity Securities, as defined in the Rule 6600 Series, including, but not limited to, OTC Bulletin Board securities.

B. No change.

C. Supplemental Delegation Regarding Committees

1. No change.

2. [Operations] Uniform Practice Code Committee

a. The [Operations] Uniform Practice Code Committee shall have the following functions:

i. through iii. No change.

b. The NASD Regulation Board shall appoint the [Operations] Uniform Practice Code Committee by resolution. The [Operations]

Uniform Practice Code Committee shall have not more than 50 percent of its members directly engaged in market-making activity or employed by a member firm whose revenues from market-making activity exceed ten percent of its total revenues.

III. Nasdaq

A. Delegation of Functions and Authority

1. Subject to Section I.B.11., the NASD hereby delegates to Nasdaq and Nasdaq assumes the following responsibilities and functions as a registered securities association:

a. To operate The Nasdaq Stock Market, automated systems supporting The Nasdaq Stock Market, and other markets or systems[for non-Nasdaq securities].

b. and c. No change.

d. To develop and adopt rule changes (i) applicable to the collection, processing, and dissemination of quotation and transaction information for securities traded on The Nasdaq Stock Market, on other markets operated by The Nasdaq Stock Market, and in the third market for securities listed on a registered exchange, [and in the over-the-counter market,](ii) for Nasdaq-operated trading systems for these securities, and (iii) establishing trading practices with respect to these securities.

e. through o. No change.

2. No change.

B. and C. No change.

IV. and V. No change.

* * * * *

6545. Trading and Quotation Halt in OTCBB-Eligible Securities

(a) Authority for Initiating a Trading and Quotation Halt

In circumstances in which it is necessary to protect investors and the public interest, [Nasdaq]NASD may direct members, pursuant to the procedures set forth in paragraph (b), to halt trading and quotations in the over-the-counter ("OTC") market of a security or an American Depository Receipt ("ADR") that is included in the OTC Bulletin Board ("OTCBB") if:

(1) the OTCBB security or the security underlying the OTCBB ADR is listed on or registered with a foreign securities exchange or market, and the foreign securities exchange, market, or regulatory authority overseeing such issuer, exchange, or market, halts trading in such security for regulatory reasons because of public interest concerns ("Foreign Regulatory Halt"); provided, however, that [Nasdaq]NASD will not impose a trading and quotation halt if the Foreign Regulatory Halt was imposed solely for material news, a regulatory filing deficiency, or operational reasons; or

(2) through (3) No change.

(b) Procedure for Initiating a Trading and Quotation Halt

(1) When a halt is initiated under subparagraph (a)(1) of this rule, upon receipt of information from a foreign securities exchange or market on which the OTCBB security or the security underlying the OTCBB ADR is listed or registered, or from a regulatory authority overseeing such issuer, exchange, or

market, [Nasdaq]NASD will promptly evaluate the information and determine whether a trading and quotation halt in the OTCBB security is appropriate.

(2) Should [Nasdaq]NASD determine that a basis exists under this rule for initiating a trading and quotation halt, the commencement of the trading and quotation halt will be effective simultaneous with the issuance of appropriate public notice.

(3) Trading and quotations in the OTC market may resume when [Nasdaq]NASD determines that the basis for the halt no longer exists, or when five business days have elapsed from the date [Nasdaq]NASD initiated the trading and quotation halt in the security, whichever occurs first. [Nasdaq]NASD shall disseminate appropriate public notice that the trading and quotation halt is no longer in effect.

(c) No change.

* * * * *

6620. Transaction Reporting

(a) through (e) No change.

(f) Reporting Cancelled Trades

(1) Obligation and Party Responsible for Reporting Cancelled Trades

With the exception of trades cancelled [by Nasdaq staff] in accordance with Rule 11890, members shall report to the Nasdaq Market Center the cancellation of any trade previously submitted to the Nasdaq Market Center. The member responsible under Rule 6620 for submitting the original trade report shall submit the cancellation report in accordance with the procedures set forth in

paragraph (f)(2). For trades executed through a Nasdaq system that automatically reports trades to the Nasdaq Market Center, the member that would have been required by Rule 6620 to report the trade (but for the trade being reported automatically by the Nasdaq system) shall submit the cancellation report in accordance with the procedures set forth in paragraph (f)(2).

(2) No change.

* * * * *

7010. System Services

(a) through (o) No change.

(p) Historical Research and Administrative Reports

(1) and (2) No change.

(3) The charge to be paid by the purchaser of an Historical Research Report regarding an OTC Bulletin Board security or other OTC security through the OTCBB.com website shall be determined in accordance with the following schedule:

A. No change.

B. No change.

C. [Nasdaq]NASD may, in its discretion, choose to make a report that purchasers wish to obtain every trading day available on a subscription discount basis. In such cases, the price for a subscription to receive a report every trading day in a month shall be the applicable rate to receive the report for a day times 20; the price for a subscription to receive the report for every trading day in a quarter shall be the applicable rate to

receive the report every day times 60; and the price for a subscription to receive a report every trading day in a year shall be the applicable rate to receive the report for a day times 240.

D. No change.

(4) No change.

(q) through (v) No change.

* * * * *

11120. Definitions

(a) Committee

The term "Committee" as used in this Code, unless the context otherwise requires, shall mean the Committee delegated the authority to administer this Code by the Board of Governors.*

(b) through (g) No change.

* The Board of Governors has so designated the [Association's Operations] NASD's Uniform Practice Code Committee.

* * * * *

11890. Clearly Erroneous Transactions

(a) No change.

(b) Procedures for Reviewing Transactions on NASD's or Nasdaq's Own Motion

(1) In the event of (i) a disruption or malfunction in the use or operation of any quotation, execution, communication, or trade reporting system owned or

operated by Nasdaq and approved by the Commission, or (ii) extraordinary market conditions or other circumstances in which the nullification or modification of transactions may be necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest, the President of Nasdaq or any Executive Vice President designated by the President may, on his or her own motion, review any transaction in Nasdaq or exchange-listed securities arising out of or reported through any such quotation, execution, communication, or trade reporting system, including transactions entered into by a member of a UTP Exchange through the use or operation of such a system, but excluding transactions that are entered into through, or reported to, a UTP Exchange. A Nasdaq officer acting pursuant to this subsection may declare any such transaction null and void or modify the terms of any such transaction if the officer determines that (i) the transaction is clearly erroneous, or (ii) such actions are necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest; provided, however, that[, in the absence of extraordinary circumstances,] the officer must take action pursuant to this subsection within thirty (30) minutes of detection of the transaction[, but in no event later than] except in the event of extraordinary circumstances, in which event the officer must take action by 3:00 p.m., Eastern Time, on the next trading day following the date of the [trade] transaction at issue.

(2) In the event of (i) a disruption or malfunction in the use or operation of any quotation, communication, or trade reporting system owned or operated by NASD or its subsidiaries and approved by the Commission, or (ii) extraordinary

market conditions in which the nullification or modification of transactions may be necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest, an Executive Vice President of NASD's Market Regulation Department or an Executive Vice President of NASD's Transparency Services Department may, on his or her own motion, review any transaction in an OTC equity security, as defined in Rule 6610, arising out of or reported through any such quotation, communication, or trade reporting system. An NASD officer acting pursuant to this subsection may declare any such transaction null and void or modify the terms of any such transaction if the officer determines that (i) the transaction is clearly erroneous, or (ii) such actions are necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest; provided, however, that the officer must take action pursuant to this subsection within thirty (30) minutes of detection of the transaction except in the event of extraordinary circumstances, in which event the officer must take action by 3:00 p.m., Eastern Time, on the next trading day following the date of the transaction at issue.

(c) Review by the Market Operations Review Committee (“MORC”) or the Uniform Practice Code (“UPC”) Committee

(1) Subject to the limitations described in paragraph (c)(2), a member, member of a UTP Exchange, or person associated with any such member may appeal a determination made under paragraph (a) to the MORC. A member, member of a UTP Exchange, or person associated with any such member may appeal a determination made under paragraph (b) (1) to the MORC, or a

determination made under paragraph (b)(2) to the UPC Committee, unless the officer making the determination also determines that the number of the affected transactions is such that immediate finality is necessary to maintain a fair and orderly market and to protect investors and the public interest. An appeal must be made in writing, and must be received by Nasdaq or NASD, as applicable, within thirty (30) minutes after the person making the appeal is given the notification of the determination being appealed, except that if Nasdaq or NASD notifies the parties of action taken pursuant to paragraph (b) after 4:00 p.m., the appeal must be received by [Nasdaq by] 9:30 a.m. the next trading day. Once a written appeal has been received, the counterparty to the trade that is the subject of the appeal will be notified of the appeal and both parties shall be able to submit any additional supporting written information up until the time the appeal is considered by the appropriate Committee[MORC]. Either party to a disputed trade may request the written information provided by the other party during the appeal process. An appeal [to the MORC] shall not operate as a stay of the determination being appealed, and the scope of the appeal shall be limited to trades to which the person making the appeal is a party. Subject to the limitations described in paragraph (c)(2), once a party has appealed a determination to the appropriate Committee[MORC], the determination shall be reviewed and a decision rendered, unless (i) both parties to the transaction agree to withdraw the appeal prior to the time a decision is rendered[by the MORC], or (ii) the party filing the appeal withdraws its appeal prior to the notification of counterparties under this paragraph (c)(1). Upon consideration of the record, and after such

hearings as it may in its discretion order, the MORC or the UPC Committee, pursuant to the standards set forth in this rule, shall affirm, modify, reverse, or remand the determination.

(2) If a Nasdaq officer determines under paragraph (a)(2)(C) that a transaction is not eligible for review, a party appealing such determination must allege in its appeal a mistake of material fact upon which it believes the officer's determination was based. If the MORC concludes that an appeal of such a determination does not allege a mistake of material fact, the determination shall become final and binding. If the MORC concludes that an appeal of such a determination alleges a mistake of material fact, Nasdaq shall notify the counterparty to the transaction and the determination shall be reviewed by the MORC as provided under paragraph (c)(1). If the MORC then finds that the determination was based on a mistake of material fact, the MORC shall remand the matter for adjudication under paragraph (a); otherwise, the determination shall become final and binding.

(3) The decision of [the MORC] a Committee pursuant to an appeal, or a determination by a Nasdaq or NASD officer that is not appealed, shall be final and binding upon all parties and shall constitute final [Association] action on the matter in issue. Any determination by a Nasdaq or NASD officer pursuant to paragraph (a) or (b) or any decision by [the MORC] a Committee pursuant to paragraph (c) shall be rendered without prejudice as to the rights of the parties to the transaction to submit their dispute to arbitration.

(d) Communications

(1) All materials submitted [to Nasdaq or the MORC]pursuant to this Rule shall be submitted within the time parameters specified herein via such telecommunications procedures as Nasdaq or NASD may announce from time to time in an NASD Notice to Members or Nasdaq Head Trader Alert, as applicable. Materials shall be deemed received at the time indicated by the telecommunications equipment (e.g., facsimile machine or computer) receiving the materials. Nasdaq and NASD, in [its]their sole and absolute discretion, reserve[s] the right to reject or accept any material that is not received within the time parameters specified herein.

(2) Nasdaq or NASD shall provide affected parties with prompt notice of determinations under this Rule via facsimile machine, electronic mail, or telephone (including voicemail); provided, however, that if an officer nullifies or modifies a large number of transactions pursuant to paragraph (b), Nasdaq or NASD may instead provide notice to parties via Nasdaq telecommunications protocols, a press release, or any other method reasonably expected to provide rapid notice to many market participants.

IM-11890-1. Refusal to Abide by Rulings [of a Nasdaq Officer or the MORC]

It shall be considered conduct inconsistent with just and equitable principles of trade for any member to refuse to take any action that is necessary to effectuate a final decision of a Nasdaq or NASD officer or the MORC or the UPC Committee under Rule 11890.

IM-11890-2. Review by Panels of the MORC or the UPC Committee

For purposes of Rule 11890 and other NASD rules that permit review of Nasdaq or NASD decisions by the MORC or the UPC Committee, respectively, a decision of the MORC or the UPC Committee may be rendered by a panel of [the MORC] that Committee. In the case of a review of a determination by a Nasdaq officer under Rule 11890(a)(2)(C) that a transaction is not eligible for review (including a review of the sufficiency of allegations contained in an appeal regarding such a determination), the panel may consist of one or more members of the MORC, provided that no more than 50 percent of the members of any panel are directly engaged in market making activity or employed by a member whose revenues from market making activity exceed ten percent of its total revenues. In all other cases, the panel shall consist of three or more members of [the MORC]that Committee, provided that no more than 50 percent of the members of any panel are directly engaged in market making activity or employed by a member firm whose revenues from market making activity exceed ten percent of its total revenues.

* * * * *

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

Rule Filing History

On July 19, 2005, NASD filed with the Commission proposed rule change SR-NASD-2005-089, proposing amendments to NASD's Delegation Plan and certain NASD rules. On July 22, 2005, NASD filed with the Commission Amendment No. 1 to SR-NASD-2005-089 ("Amendment No. 1"), which proposed to amend the text of Rule 6620(f), among other technical changes. On July 25, 2005, the Commission published for comment the proposed rule change in the Federal Register. The SEC received one comment letter in response to the Federal Register publication. On July 27, 2005, the SEC approved SR-NASD-2004-009, which, among other things, amended the text of Rule 11890 and Interpretive Material (IM)-11890 and became effective on July 27, 2005.

Given the SEC's approval of SR-NASD-2004-009 and the comment letter received in response to the publication of the proposed rule change in the Federal Register, NASD is filing this Amendment No. 2 to SR-NASD-2005-089 ("Amendment No. 2") to conform the rule text in the proposed rule change to reflect the amendments in SR-NASD-2004-009 and to respond to the comment letter received.

Proposal

As described in the original filing and Amendment No. 1, pursuant to the Delegation Plan, activities related to or in support of the trading in OTC equity securities, including, but not limited to, operation of the OTCBB⁵ (collectively referred to herein as

⁵ The OTCBB provides an electronic quotation medium for subscribing members to enter, update, and display quotations in individual securities on a real-time basis. Such quotation entries may consist of a priced bid and/or offer; an unpriced

“OTC equity operations”), have been delegated to Nasdaq. NASD is proposing to assume direct authority for OTC equities operations rather than delegate it to Nasdaq and delegate to NASD Regulation rulemaking authority related to trading practices for OTC equity securities.

In furtherance of this transition, NASD also is proposing to: (1) transfer trading and quotation halt authority for OTCBB-eligible securities from Nasdaq to NASD; (2) conform the language governing reporting cancelled trades to reflect the proposed changes in Rule 11890 relating to NASD’s ability to nullify or modify transactions in OTC equity securities; (3) transfer the authority to set certain fees in this area from Nasdaq to NASD; and (4) transfer from Nasdaq to NASD the ability to nullify or modify a transaction in an OTC equity security due to a disruption or malfunction in the use or operation of any quotation, communication, or trade reporting system or other extraordinary market conditions.

Comments to the Proposed Rule Change

The Commission received one comment letter in response to the publication of the proposed rule change in the Federal Register.⁶ The commenter supports the proposal, but argues that further rulemaking related to the OTC market is required. Specifically, the commenter suggests that various rule changes and guidance are necessary to reflect

indication of interest; or a bid/offer accompanied by a modifier to reflect unsolicited customer interest. The OTCBB is not an issuer listing service and therefore does not maintain a relationship with quoted issuers or impose quantitative listing standards as do Nasdaq and the exchanges. To be eligible for quotation on the OTCBB, issuers must be current in their filings with the SEC or applicable regulatory authority.

⁶ See Letter dated August 29, 2005 from R. Cromwell Coulson, Chief Executive Officer, Pink Sheets LLC.

the current state of the OTC market, including additional dissemination of certain trade and volume data, expanded trade halt and clearly erroneous authority, and limitations on member conduct relating to unlawful distributions of securities by customers

Because the changes recommended by the commenter are outside the scope of the proposed changes that are part of this rule filing, NASD is not responding to these recommendations specifically herein. NASD will review and analyze these recommendations in the same manner in which it would consider any requests for rulemaking, and, based on such review and analysis, will determine whether further action on these recommendations is appropriate.

Conforming and Clarifying Changes

NASD also is making certain conforming changes to the text of Rule 11890 and Interpretive Material (IM)-11890. As noted above, after the proposed rule change was filed with the Commission, the SEC approved SR-NASD-2004-009, which, among other things, proposed amendments to Rule 11890 and IM-11890.⁷ The proposed changes in SR-NASD-2004-009 became effective on July 27, 2005. Given the SEC's approval of SR-NASD-2004-009, NASD is proposing to amend Rule 11890 and IM-11890 to conform the rule text in the proposed rule change to reflect those amendments.

NASD also is amending Rule 11890(b)(1) and (2) to clarify the time limitations associated with NASD and Nasdaq's clearly erroneous authority. Specifically, NASD is clarifying that the officer must take action pursuant to the authority under Rule 11890(b)(1) and (2) within thirty (30) minutes of detection of the transaction except in

⁷ See Exchange Act Release No. 52141 (July 27, 2005), 70 FR 44709 (August 3, 2005).

the event of extraordinary circumstances, in which event the officer must take action by 3:00 p.m., Eastern Time, on the next trading day following the date of the transaction at issue.

The proposed rule change will be effective on October 1, 2005, assuming SEC approval prior to that 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 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 the proposed rule changes will clarify the NASD Delegation Plan and rules to reflect NASD's direct responsibility for OTC equity operations.

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 on the proposed rule change were solicited by the Commission in response to SR-NASD-2005-089, which proposed amendments to NASD's Delegation Plan and certain NASD rules. The Commission received one comment letter in response

to the Federal Register publication of SR-NASD-2005-089. The comments are summarized above.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

NASD has requested that the Commission find good cause pursuant to Section 19(b)(2) of the Act for approving the proposed rule change prior to the 30th day after publication in the Federal Register. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to NASD and, in particular, the requirements of Section 15A of the Act and the rules and regulations thereunder. Because the proposed changes in Amendment No.2 are technical in nature, the Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof.

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 the 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. 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-2005-089 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 20549-2001.

All submissions should refer to File Number SR-NASD-2005-089. 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 20549-2001. 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-2005-089 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.⁸

Secretary

⁸ 17 CFR 200.30-3(a)(12).

EXHIBIT 4

Exhibit 4 shows the full text of rule change marking conforming changes from the text as proposed on July 22, 2005 in Amendment No. 1 to this Partial Amendment No. 2, with the language in Amendment No. 1 shown as if adopted, and the new language in this Partial Amendment No. 2 marked to show additions and deletions.

New language approved in SR-NASD-2004-009 is underlined.
Deletions approved in SR-NASD-2004-009 are bracketed.

Proposed new language in this Partial Amendment No. 2 is double-underlined
Proposed deletions in this Partial Amendment No. 2 are double-bracketed

* * * * *

**PLAN OF ALLOCATION AND DELEGATION OF FUNCTIONS BY NASD TO
SUBSIDIARIES**

I. NASD, Inc.

The NASD, Inc. (referenced as "NASD"), the Registered Section 15A Association, is the parent company of the Subsidiaries NASD Regulation, Inc. (referenced individually as "NASD Regulation"), The Nasdaq Stock Market, Inc. (referenced individually as "Nasdaq"), and NASD Dispute Resolution, Inc. (referenced individually as "NASD Dispute Resolution") (referenced collectively as the "Subsidiaries"). The term "Association" shall refer to the NASD and the Subsidiaries collectively.

A. Other Defined Terms - The terms "Industry Governors," "Non-Industry Governors," "Public Governors," "Industry Directors," "Non-Industry Directors," "Public Directors," "Industry committee members," "Non-Industry committee members," and "Public committee members," as used herein, shall have the meanings set forth in the By-Laws of the NASD, NASD Regulation and Nasdaq, as applicable. For purposes of Section III herein, the term "other markets or systems" does not include markets or

systems relating to the trading of OTC Equity Securities as defined in the Rule 6600 Series, including, but not limited to, OTC Bulletin Board securities.

B. through E. No change.

II. NASD Regulation, Inc.

A. Delegation of Functions and Authority:

1. Subject to Section I.B.11, the NASD hereby delegates to NASD Regulation and NASD Regulation assumes the following responsibilities and functions as a registered securities association:

a. through s. No change.

t. To develop and adopt rule changes to establish trading practices with respect to OTC Equity Securities, as defined in the Rule 6600 Series, including, but not limited to, OTC Bulletin Board securities.

B. No change.

C. Supplemental Delegation Regarding Committees

1. No change.

2. Uniform Practice Code Committee

a. The Uniform Practice Code Committee shall have the following functions:

i. through iii. No change.

b. The NASD Regulation Board shall appoint the Uniform Practice Code Committee by resolution. The Uniform Practice Code Committee shall have not more than 50 percent of its members directly engaged in

market-making activity or employed by a member firm whose revenues from market-making activity exceed ten percent of its total revenues.

III. Nasdaq

A. Delegation of Functions and Authority

1. Subject to Section I.B.11., the NASD hereby delegates to Nasdaq and Nasdaq assumes the following responsibilities and functions as a registered securities association:

a. To operate The Nasdaq Stock Market, automated systems supporting The Nasdaq Stock Market, and other markets or systems.

b. and c. No change.

d. To develop and adopt rule changes (i) applicable to the collection, processing, and dissemination of quotation and transaction information for securities traded on The Nasdaq Stock Market, on other markets operated by The Nasdaq Stock Market, and in the third market for securities listed on a registered exchange, (ii) for Nasdaq-operated trading systems for these securities, and (iii) establishing trading practices with respect to these securities.

e. through o. No change.

2. No change.

B. and C. No change.

IV. and V. No change.

* * * * *

6545. Trading and Quotation Halt in OTCBB-Eligible Securities

(a) Authority for Initiating a Trading and Quotation Halt

In circumstances in which it is necessary to protect investors and the public interest, NASD may direct members, pursuant to the procedures set forth in paragraph (b), to halt trading and quotations in the over-the-counter ("OTC") market of a security or an American Depository Receipt ("ADR") that is included in the OTC Bulletin Board ("OTCBB") if:

(1) the OTCBB security or the security underlying the OTCBB ADR is listed on or registered with a foreign securities exchange or market, and the foreign securities exchange, market, or regulatory authority overseeing such issuer, exchange, or market, halts trading in such security for regulatory reasons because of public interest concerns ("Foreign Regulatory Halt"); provided, however, that NASD will not impose a trading and quotation halt if the Foreign Regulatory Halt was imposed solely for material news, a regulatory filing deficiency, or operational reasons; or

(2) through (3) No change.

(b) Procedure for Initiating a Trading and Quotation Halt

(1) When a halt is initiated under subparagraph (a)(1) of this rule, upon receipt of information from a foreign securities exchange or market on which the OTCBB security or the security underlying the OTCBB ADR is listed or registered, or from a regulatory authority overseeing such issuer, exchange, or market, NASD will promptly evaluate the information and determine whether a trading and quotation halt in the OTCBB security is appropriate.

(2) Should NASD determine that a basis exists under this rule for initiating a trading and quotation halt, the commencement of the trading and quotation halt will be effective simultaneous with the issuance of appropriate public notice.

(3) Trading and quotations in the OTC market may resume when NASD determines that the basis for the halt no longer exists, or when five business days have elapsed from the date NASD initiated the trading and quotation halt in the security, whichever occurs first. NASD shall disseminate appropriate public notice that the trading and quotation halt is no longer in effect.

(c) No change.

* * * * *

6620. Transaction Reporting

(a) through (e) No change.

(f) Reporting Cancelled Trades

(1) Obligation and Party Responsible for Reporting Cancelled Trades

With the exception of trades cancelled in accordance with Rule 11890, members shall report to the Nasdaq Market Center the cancellation of any trade previously submitted to the Nasdaq Market Center. The member responsible under Rule 6620 for submitting the original trade report shall submit the cancellation report in accordance with the procedures set forth in paragraph (f)(2). For trades executed through a Nasdaq system that automatically reports trades to the Nasdaq Market Center, the member that would have been required by Rule 6620 to report the trade (but for the trade being reported automatically by the

Nasdaq system) shall submit the cancellation report in accordance with the procedures set forth in paragraph (f)(2).

(2) No change.

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7010. System Services

(a) through (o) No change.

(p) Historical Research and Administrative Reports

(1) and (2) No change.

(3) The charge to be paid by the purchaser of an Historical Research Report regarding an OTC Bulletin Board security or other OTC security through the OTCBB.com website shall be determined in accordance with the following schedule:

A. No change.

B. No change.

C. NASD may, in its discretion, choose to make a report that purchasers wish to obtain every trading day available on a subscription discount basis. In such cases, the price for a subscription to receive a report every trading day in a month shall be the applicable rate to receive the report for a day times 20; the price for a subscription to receive the report for every trading day in a quarter shall be the applicable rate to receive the report every day times 60; and the price for a subscription to receive a report every trading day in a year shall be the applicable rate to receive the report for a day times 240.

(4) No change.

(q) through (v) No change.

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11120. Definitions

(a) Committee

The term "Committee" as used in this Code, unless the context otherwise requires, shall mean the Committee delegated the authority to administer this Code by the Board of Governors.*

(b) through (g) No change.

* The Board of Governors has so designated the NASD's Uniform Practice Code Committee.

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11890. Clearly Erroneous Transactions

(a) No change.

(b) Procedures for Reviewing Transactions on NASD's or Nasdaq's Own

Motion

(1) In the event of (i) a disruption or malfunction in the use or operation of any quotation, execution, communication, or trade reporting system owned or operated by Nasdaq and approved by the Commission, or (ii) extraordinary market conditions or other circumstances in which the nullification or modification of transactions may be necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest, the President

of Nasdaq or any Executive Vice President designated by the President may, on his or her own motion, review any transaction in Nasdaq or exchange-listed securities arising out of or reported through any such quotation, execution, communication, or trade reporting system, including transactions entered into by a member of a UTP Exchange through the use or operation of such a system, but excluding transactions that are entered into through, or reported to, a UTP Exchange. A Nasdaq officer acting pursuant to this subsection may declare any such transaction null and void or modify the terms of any such transaction if the officer determines that (i) the transaction is clearly erroneous, or (ii) such actions are necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest; provided, however, that[[, in the absence of extraordinary circumstances,]] the officer must take action pursuant to this subsection within thirty (30) minutes of detection of the transaction[[, but in no event later than]] except in the event of extraordinary circumstances, in which event the officer must take action by 3:00 p.m., Eastern Time, on the next trading day following the date of the [[trade]]transaction at issue.

(2) In the event of (i) a disruption or malfunction in the use or operation of any quotation, communication, or trade reporting system owned or operated by NASD or its subsidiaries and approved by the Commission, or (ii) extraordinary market conditions in which the nullification or modification of transactions may be necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest, an Executive Vice President of NASD's Market Regulation Department or an Executive Vice President of NASD's Transparency

Services Department may, on his or her own motion, review any transaction in an OTC equity security, as defined in Rule 6610, arising out of or reported through any such quotation, communication, or trade reporting system. An NASD officer acting pursuant to this subsection may declare any such transaction null and void or modify the terms of any such transaction if the officer determines that (i) the transaction is clearly erroneous, or (ii) such actions are necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest; provided, however[[, that, in the absence of extraordinary circumstances,]] the officer must take action pursuant to this subsection within thirty (30) minutes of detection of the transaction except in the event of extraordinary circumstances, in which event the officer must take action by [[but in no event later than]] 3:00 p.m., Eastern Time, on the next trading day following the date of the [[trade]]transaction at issue.

(c) Review by the Market Operations Review Committee (“MORC”) or the Uniform Practice Code (“UPC”) Committee

(1) Subject to the limitations described in paragraph (c)(2), a[A] member, member of a UTP Exchange, or person associated with any such member may appeal a determination made under [subsection]paragraph (a) to the MORC. A member, member of a UTP Exchange, or person associated with any such member may appeal a determination made under [subsection]paragraph (b)(1) to the MORC, or a determination made under subsection (b)(2) to the UPC Committee, unless the officer making the determination also determines that the number of the affected transactions is such that immediate finality is necessary to

maintain a fair and orderly market and to protect investors and the public interest. An appeal must be made in writing, and must be received by Nasdaq or NASD, as applicable, within thirty (30) minutes after the person making the appeal is given the notification of the determination being appealed, except that if Nasdaq or NASD notifies the parties of action taken pursuant to paragraph (b) after 4:00 p.m., the appeal must be received by 9:30 a.m. the next trading day. Once a written appeal has been received, the counterparty to the trade that is the subject of the appeal will be notified of the appeal and both parties shall be able to submit any additional supporting written information up until the time the appeal is considered by the appropriate Committee ~~[[MORC]]~~. Either party to a disputed trade may request the written information provided by the other party during the appeal process. An appeal shall not operate as a stay of the determination being appealed, and the scope of the appeal shall be limited to trades to which the person making the appeal is a party. Subject to the limitations described in paragraph (c)(2), [O]once a party has appealed a determination to the appropriate Committee ~~[[MORC]]~~, the determination shall be reviewed and a decision rendered, unless (i) both parties to the transaction agree to withdraw the appeal prior to the time a decision is rendered, or (ii) the party filing the appeal withdraws its appeal prior to the notification of counterparties under this paragraph (c)(1). Upon consideration of the record, and after such hearings as it may in its discretion order, the MORC or the UPC Committee, pursuant to the standards set forth in this [section]rule, shall affirm, modify, reverse, or remand the determination.

(2) If a Nasdaq officer determines under paragraph (a)(2)(C) that a transaction is not eligible for review, a party appealing such determination must allege in its appeal a mistake of material fact upon which it believes the officer's determination was based. If the MORC concludes that an appeal of such a determination does not allege a mistake of material fact, the determination shall become final and binding. If the MORC concludes that an appeal of such a determination alleges a mistake of material fact, Nasdaq shall notify the counterparty to the transaction and the determination shall be reviewed by the MORC as provided under paragraph (c)(1). If the MORC then finds that the determination was based on a mistake of material fact, the MORC shall remand the matter for adjudication under paragraph (a); otherwise, the determination shall become final and binding.

~~[(2)](3)~~ The decision of a Committee ~~[[MORC]]~~ pursuant to an appeal, or a determination by a Nasdaq or NASD officer that is not appealed, shall be final and binding upon all parties and shall constitute final action on the matter in issue. Any determination by a Nasdaq or NASD officer pursuant to paragraph (a) or (b) or any decision by a Committee ~~[[MORC]]~~ pursuant to paragraph (c) ~~[(1)]~~ shall be rendered without prejudice as to the rights of the parties to the transaction to submit their dispute to arbitration.

(d) Communications

(1) All materials submitted pursuant to this Rule shall be submitted [via facsimile machine and] within the time parameters specified herein via such telecommunications procedures as Nasdaq or NASD may announce from time to

time in an NASD Notice to Members or Nasdaq Head Trader Alert, as applicable [; provided, however, that if requested, Nasdaq or NASD staff may authorize submission of material via electronic mail on a case-by-case basis]. Materials shall be deemed received at the time indicated by the telecommunications equipment ([i.e.]e.g., facsimile machine or computer) receiving the materials. Nasdaq and NASD, in their sole and absolute discretion, reserve the right to reject or accept any material that is not received within the time parameters specified herein.

(2) Nasdaq or NASD shall provide affected parties with prompt notice of determinations under this Rule via facsimile machine, electronic mail, or telephone (including voicemail); provided, however, that if an officer nullifies or modifies a large number of transactions pursuant to [subsection]paragraph (b), Nasdaq or NASD may instead provide notice to parties via [the] Nasdaq [Workstation II Service]telecommunications protocols, a press release, or any other method reasonably expected to provide rapid notice to many market participants.

IM-11890-1. Refusal to Abide by Rulings

It shall be considered conduct inconsistent with just and equitable principles of trade for any member to refuse to take any action that is necessary to effectuate a final decision of a Nasdaq or NASD officer or the MORC or the UPC Committee under Rule 11890.

IM-11890-2. Review by Panels of the MORC or the UPC Committee

For purposes of Rule 11890 and other NASD rules that permit review of Nasdaq or NASD decisions by the MORC or the UPC Committee, respectively, a decision of the MORC or the UPC Committee may be rendered by a panel[of three or more members] of that Committee. In the case of a review of a determination by a Nasdaq officer under Rule 11890(a)(2)(C) that a transaction is not eligible for review (including a review of the sufficiency of allegations contained in an appeal regarding such a determination), the panel may consist of one or more members of the MORC, provided that no more than 50 percent of the members of any panel are directly engaged in market making activity or employed by a member whose revenues from market making activity exceed ten percent of its total revenues. In all other cases, the panel shall consist of three or more members of that Committee [[the MORC]], provided that no more than 50 percent of the members of any panel are directly engaged in market making activity or employed by a member firm whose revenues from market making activity exceed ten percent of its total revenues.