

that placed the sell order. Then, with respect to each ITS participant exchange, the exchange will determine whether it is a net sender or net receiver of ITS trades and send fees to or accept fees from each other exchange accordingly. The Commission believes this is an equitable manner for the exchanges to obtain funds to pay their Section 31 fees on covered sales resulting from ITS trades.

Under Section 19(b)(2) of the Act,¹⁸ the Commission may not approve any proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof, unless the Commission finds good cause for so doing. The Commission hereby finds good cause for approving the proposed rule change prior to the thirtieth day after publishing notice of filing thereof in the **Federal Register**. In this case, the Commission does not believe a comment period is necessary because all of the parties affected by the proposed fee—the other ITS participant exchanges—have already consented to and will adopt the same fee arrangement.¹⁹

For the reasons set forth above, the Commission finds good cause to accelerate approval of the proposed rule change pursuant to Section 19(b)(2) of the Act.²⁰

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²¹ that the proposed rule change (SR-CHX-2005-33) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²²

Jonathan G. Katz,

Secretary.

[FR Doc. E5-6085 Filed 11-2-05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52679; File No. SR-NASD-2005-112]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change Relating to Amendments To Rule 3360 To Expand Short-Interest Reporting To OTC Equity Securities

October 26, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) ¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 20, 2005, the National Association of Securities Dealers, Inc. (“NASD”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

NASD is proposing to amend Rule 3360 to expand the short interest reporting requirements to over-the-counter (“OTC”) equity securities. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

3360 Short-Interest Reporting

(a) Each member shall maintain a record of total “short” positions in all customer and proprietary firm accounts in *OTC Equity Securities*, securities included in The Nasdaq Stock Market, and in each other security listed on a registered national securities exchange and not otherwise reported to another self-regulatory organization and shall regularly report such information to NASD in such a manner as may be prescribed by NASD. [For the purposes of this rule, the term “customer” includes a broker/dealer.] Reports shall be made as of the close of the settlement date designated by NASD. Reports shall be received by NASD no later than the second business day after the reporting settlement date designated by NASD.

(b) For purposes of this Rule[.];

(1) “short” positions to be reported are those resulting from “short sales” as

that term is defined in SEC Rule 200 of Regulation SHO, with the exception of positions that meet the requirements of Subsections (e)(1), (6), (7), (8), and (10) of SEC Rule 10a-1 adopted under the Act[.];

(2) the term “customer” includes a broker-dealer; and

(3) the term “OTC Equity Securities” shall mean any equity security that is not listed on The Nasdaq Stock Market or a national securities exchange.

* * * * *

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

NASD is proposing to amend Rule 3360, Short-Interest Reporting, to require that members maintain and report on a monthly basis total short positions in OTC equity securities in all customer and proprietary firm accounts.³ Currently, Rule 3360(a) requires members to maintain a record of total short positions⁴ in all customer⁵ and proprietary firm accounts in Nasdaq securities (and listed securities if not reported to another self-regulatory organization (“SRO”)) and requires members to report such information to

³ Non-self-clearing broker-dealers generally are considered to have satisfied their reporting requirement by making appropriate arrangements with their respective clearing organizations. See *Notice to Members* 03-08 (January 2003).

⁴ Rule 3360(b) provides that short positions required to be reported under the rule are those resulting from short sales as the term is defined in SEC Rule 200 of Regulation SHO, with limited exceptions. SEC Rule 200 of Regulation SHO provides, in part, the following: “The term ‘short sale’ shall mean any sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller.” 17 CFR 242.200(a).

⁵ Short sale positions held for other broker-dealers that fall within the definition of short position provided in Rule 3360(b) must be reported under Rule 3360(a), unless these positions already are reported to an SRO. See *Notice to Members* 03-08 (January 2003).

¹⁸ 15 U.S.C. 78s(b)(2).

¹⁹ See *supra* note 17.

²⁰ *Id.*

²¹ *Id.*

²² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

NASD on a monthly basis. NASD believes that expanding the monthly short interest reporting requirements to OTC equity securities will increase the information available to public investors and other interested parties related to trading in OTC equity securities.

Accordingly, NASD proposes to amend Rule 3360(a) to require that members maintain and report to NASD short sale positions for OTC equity securities. For purposes of the proposed rule change, OTC equity securities would be defined as any equity security that is not listed on The Nasdaq Stock Market or a national securities exchange.

NASD will announce the effective date of the proposed rule change in a *Notice to Members* to be published no later than 60 days following Commission approval. In recognition of the technological and systems changes the proposed rule change may require, the effective date will be 90 days following publication of the *Notice to Members* announcing Commission approval.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁶ 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 change will increase the information available to public investors and other interested parties related to trading in OTC equity securities.

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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such

longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

The Commission notes that the NASD is proposing an implementation period for proposed NASD Rule 3360. Specifically, the Commission notes that the NASD is proposing that it will announce the effective date of the proposed rule change in a *Notice to Members* to be published no later than 60 days following Commission approval and that the effective date of the proposed rule change will be 90 days following publication of the *Notice to Members* announcing Commission approval. The Commission specifically requests comment regarding whether this implementation period could be shorter.

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-2005-112 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-NASD-2005-112. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to the File Number SR-NASD-2005-112 and should be submitted on or before November 25, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Jonathan G. Katz,
Secretary.

[FR Doc. E5-6086 Filed 11-2-05; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52692; File No. SR-NASD-2005-064]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval of Proposed Rule Change as Amended by Amendment No. 1 Relating to the Publication of Decisions Issued by the National Adjudicatory Council Pursuant to NASD Rule 1015

October 28, 2005.

I. Introduction

On May 12, 2005, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend NASD Interpretive Material 8310-2, "Release of Disciplinary and Other Information Through the Public Disclosure Program" ("IM-8310-2") to authorize the NASD to release to the public information with respect to any decision issued by the National Adjudicatory Council ("NAC") pursuant to NASD Rule 1015, "Review of

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

⁶ 15 U.S.C. 78o-3(b)(6).