

# Notice to Members

OCTOBER 2006

## SUGGESTED ROUTING

Internal Audit  
Legal & Compliance  
Operations  
Registered Representatives  
Senior Management  
Systems  
Trading  
Training

## KEY TOPICS

Rule 5100  
Short Sales

## GUIDANCE

### Short Sales

SEC Approves Exemption to NASD Rule 5100 (Short Sale Rule) for Securities Included in the NASDAQ-100 Index;  
**Effective Date: October 9, 2006**

### Executive Summary

On October 2, 2006, the Securities and Exchange Commission (SEC) approved an exemption to NASD Rule 5100 (Short Sale Rule) for securities included in the NASDAQ-100 Index.<sup>1</sup> Rule 5100, as amended, is set forth in Attachment A of this Notice. The rule becomes effective on October 9, 2006.

### Questions/Further Information

Questions regarding this *Notice* may be directed to the Legal Section, Market Regulation, at (240) 386-5126; or the Office of General Counsel, at (202) 728-8071.

### Background and Discussion

On October 2, 2006, the SEC approved an exemption to Rule 5100 for securities included in the NASDAQ-100 Index. Rule 5100 provides that, with respect to trades reported to the Alternative Display Facility (ADF) or a Trade Reporting Facility (TRF), no member shall effect a short sale in a NASDAQ Global Market (NGM) Security (as defined in Rule 4200) otherwise than on an exchange at or below the current national best (inside) bid when the current national best (inside) bid is below the preceding national best (inside) bid.<sup>2</sup> All short sales in NGM securities effected otherwise than on an exchange must comply with Rule 5100 or qualify for an exception to or exemption from the rule. As amended, Rule 5100 provides an exemption, among others, for securities included in the NASDAQ-100 Index.

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The SEC also recently approved a similar rule change that exempts all securities included in the NASDAQ-100 Index from NASDAQ Exchange Rule 3350, which governs short sales in NGM securities executed on or reported to the NASDAQ Exchange.<sup>3</sup> To ensure uniform application of NASD Rule 5100 and NASDAQ Exchange Rule 3350 with respect to the new exemption for securities included in the NASDAQ-100 Index, the exemptions to both rules become effective on October 9, 2006.

## Endnotes

- 1 See Securities Exchange Act Release No. 54558 (October 2, 2006) (File No. SR-NASD-2006-076). A list of securities included in the NASDAQ-100 Index is available on NASDAQ's Web site: [www.nasdaq.com](http://www.nasdaq.com).
  - 2 SR-NASD-2005-087 amended former Rule 3350 to renumber it as Rule 5100 and apply it uniformly to short sales of over-the-counter (OTC) transactions reported to the ADF or a TRF. SR-NASD-2005-087 became effective on August 1, 2006, the date upon which NASDAQ began operation as an exchange for NASDAQ-listed securities. See Securities Exchange Act Release No. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006).
  - 3 See Securities Exchange Act Release No. 54435 (September 13, 2006), 71 FR 55042 (September 20, 2006) (SR-NASDAQ-2006-031).
- NASD also amended Rule 5100 to allow members to use, for a transitional period ending on November 3, 2006, the NASDAQ Exchange best (inside) bid rather than the national best (inside) bid for the purposes of the application of the rule. See Exchange Act Release No. 54203 (July 25, 2006), 71 FR 43256 (July 31, 2006) (SR-NASD-2006-089).

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## ATTACHMENT A

New language is underlined.

### 5100. Short Sale Rule

(a) - (b) No Change.

(c) The provisions of paragraph (a) shall not apply to:

(1) - (9) No Change.

(10) Sales of securities included in the Nasdaq-100 Index.

(d) - (l) No Change.