

# Notice to Members

JULY 2007

## SUGGESTED ROUTING

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

## KEY TOPICS

IM-5100  
IM-6130  
Rule 3360  
Rule 4632  
Rule 5100  
Rule 6130  
Rule 9610  
Short Exempt Marking Requirements  
Short Sales  
TRF Trade Reporting

## GUIDANCE

### Short Sale Requirements

NASD Rule Changes to Conform with Amendments to SEC Rule 10a-1 and Regulation SHO;  
**Compliance Date: July 6, 2007**

#### Executive Summary

NASD is issuing this *Notice* to advise firms and other interested parties of conforming NASD rule changes in light of the elimination of Rule 10a-1 under the Securities Exchange Act of 1934 (SEC Rule 10a-1) and amendments to Regulation SHO. Specifically, on July 5, 2007, NASD filed for immediate effectiveness a proposed rule change to: (1) repeal NASD Rule 5100 and IM-5100; (2) eliminate references to NASD Rule 5100 and SEC Rule 10a-1 from NASD rules; and (3) remove any "short exempt" marking requirements in NASD rules.<sup>1</sup> NASD also is advising firms of temporary no-action relief from Rule 200(g) of Regulation SHO granted by the Securities and Exchange Commission (SEC) for "short exempt" transactions in certain circumstances.

The text of the affected NASD rules, as amended, is set forth in Attachment A of this *Notice*. The compliance date of the amendments is July 6, 2007, to coincide with the compliance date of the amendments to SEC Rule 10a-1 and Regulation SHO.

#### 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.

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## Background & Discussion

On June 13, 2007, the SEC adopted amendments that, among other things: (1) eliminate the short sale price test contained in SEC Rule 10a-1<sup>2</sup>; (2) add Rule 201(a) of Regulation SHO to provide that no price test, including any price test of any self-regulatory organization (SRO), shall apply to short sales in any security; (3) add Rule 201(b) of Regulation SHO to prohibit any SRO from having a price test; and (4) amend Rule 200(g) of Regulation SHO to remove the requirement that a broker-dealer mark a sell order of an equity security as "short exempt" if the seller is relying on an exception from the price test of SEC Rule 10a-1, or any price test of any exchange or national securities association.<sup>3</sup> The elimination of SEC Rule 10a-1 and amendments to Regulation SHO became effective on July 3, 2007; however, the compliance date is July 6, 2007.

Several NASD rules are impacted by the elimination of SEC Rule 10a-1 and amendments to Regulation SHO. As a result, NASD filed for immediate effectiveness a proposed rule change to make conforming amendments to NASD rules. First, because of the elimination of SEC Rule 10a-1, NASD has removed all references to SEC Rule 10a-1 from NASD rules and also has amended Rule 3360 (Short-Interest Reporting) to replace the references to the exceptions in SEC Rule 10a-1 with the underlying rule text of each provision.<sup>4</sup> Second, under newly adopted Rule 201 of Regulation SHO, NASD is prohibited from having a short sale price test. Accordingly, NASD has eliminated its short sale rule contained in Rule 5100 and the related interpretive material in IM-5100.<sup>5</sup> NASD also has made conforming amendments to certain NASD rules to delete any references to Rule 5100. Lastly, in light of the SEC amendments to remove the short exempt marking requirement in Rule 200(g) of Regulation SHO, NASD has eliminated the short exempt marking requirements from NASD rules.

Consistent with the compliance date of the amendments to SEC Rule 10a-1 and Regulation SHO, the compliance date of the amendments to NASD rules will be July 6, 2007. However, the SEC staff of the Division of Market Regulation has issued a No-Action Letter stating that SEC staff will not recommend enforcement action under Rule 200(g) of Regulation SHO if a broker-dealer marks a short sale order "short exempt," rather than "short," for a period of 90 days following the July 6, 2007 compliance date, subject to certain conditions.<sup>6</sup> Therefore, firms are permitted to continue to mark transactions as "short exempt" for a 90-day transitional period following the July 6, 2007 compliance date, consistent with the terms and conditions of the SEC No-Action Letter.

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## Endnotes

- 1 See File No. SR-NASD-2007-047.
- 2 SEC Rule 10a-1(a)(1) generally provided that, subject to certain exceptions, an exchange-listed security may only be sold short (A) at a price above the price at which the immediately preceding sale was effected (plus tick), or (B) at the last sale price if it is higher than the last different price (zero-plus tick).
- 3 See Securities Exchange Act Release No. 55970 (June 28, 2007) 72 FR 36348 (July 3, 2007).
- 4 NASD Rule 3360 required members to record and report short interest information to NASD, with the exception of positions that meet the requirements of subsections (e)(1), (6), (7), (8) and (10) of SEC Rule 10a-1.
- 5 NASD Rule 5100, which governed short sales of over-the-counter (OTC) transactions reported to the Alternative Display Facility or a Trade Reporting Facility, generally prohibited a member firm from effecting short sales in NASDAQ Global Market securities otherwise than on an exchange for a customer account, or the firm's own account, at or below the current national best (inside) bid, when the current national best (inside) bid is below the preceding national best (inside) bid.
- 6 See Securities Industry and Financial Markets Association, SEC No-Action Letter (July 2, 2007). See also, American Stock Exchange LLC, SEC No-Action Letter (July 2, 2007). A copy of the letters are available on the SEC's Web site at [www.sec.gov/divisions/marketreg/mr-noaction/2007/sifma070207-sho.pdf](http://www.sec.gov/divisions/marketreg/mr-noaction/2007/sifma070207-sho.pdf) and [www.sec.gov/divisions/marketreg/mr-noaction/2007/amex070207-sho.pdf](http://www.sec.gov/divisions/marketreg/mr-noaction/2007/amex070207-sho.pdf).

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## ATTACHMENT A

Below is the text of the rule change. New language is underlined; deletions are in brackets.

### 3360. Short-Interest Reporting

(a) No change.

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

(A) any sale by any person, for an account in which he has an interest, if such person owns the security sold and intends to deliver such security as soon as is possible without undue inconvenience or expense;

(B) any sale of a security (except a sale to a stabilizing bid complying with Rule 104 of Regulation M) effected with the approval of an exchange which is necessary to equalize the price of such security thereon with the current price of such security on another national securities exchange which is the principal exchange market for such security;

(C) any sale of a security for a special arbitrage account by a person who then owns another security by virtue of which he is, or presently will be, entitled to acquire an equivalent number of securities of the same class as the securities sold; provided such sale, or the purchase which such sale offsets, is effected for the bona fide purpose of profiting from a current difference between the price of security sold and the security owned and that such right of acquisition was originally attached to or represented by another security or was issued to all the holders of any such class of securities of the issuer;

(D) any sale of a security registered on, or admitted to unlisted trading privileges on, a national securities exchange effected for a special international arbitrage account for the bona fide purpose of profiting from a current difference between the price of such security on a securities market not within or subject to the jurisdiction of the United States and on a securities market subject to the jurisdiction of the United States; provided the seller at the time of such sale knows or, by virtue of information currently received, has reasonable grounds to believe that an offer enabling him to cover such sale is then available to him such foreign securities market and intends to accept such offer immediately; and

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(E) any sale by an underwriter, or any member of a syndicate or group participating in the distribution of a security, in connection with an over-allotment of securities, or any lay-off sale by such a person in connection with a distribution of securities through rights or a standby underwriting commitment.

(2) No change.

(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.

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#### **4632. Transaction Reporting**

(a) through (b) No change.

##### **(c) Information To Be Reported**

Each last sale report shall contain the following information:

(1) through (3) No change.

(4) A symbol indicating whether the transaction is a buy, sell, sell short, [sell short exempt] or cross;

(5) through (6) No change.

(d) through (h) No change.

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#### **4632A. Transactions Reported by Members to TRACS**

(a) through (b) No change.

##### **(c) Information To Be Reported — Two Party Trade Reports**

(1) No change.

(2) Each two party last sale report submitted by a reporting NASD Member should contain:

(A) through (C) No change.

(D) A designated symbol denoting whether the transaction, from the Reporting NASD Member's perspective, is a buy, sell, sell short, [sell short exempt,] or cross;

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(E) If known, a designated symbol denoting whether the transaction, from the perspective of the Non-Reporting Member, is a buy, sell, or sell short[, or sell short exempt];

(F) through (T) No Change.

(3) No change.

**(d) Information To Be Reported — Three Party Trade Reports**

(1) No change.

(2) Each Three Party Trade Report Submitted by a Reporting Member shall contain the following information:

**Transaction Information**

(A) through (H) No change.

(I) All three party trade reports from Non-ECNs must be denoted as riskless principal trade reports and shall include a designated symbol denoting whether the trade between the non-ECN and the buy-side OEID is a sell[, ] or sell short[, or sell short exempt] transaction;

(J) through (V) No change.

(W) If known, a symbol denoting whether the trade, from the Sell Side OEID's perspective, is a sell[, ] or sell short[, or sell short exempt] transaction;

(X) through (BB) No change.

(3) No change.

(e) through (j) No change.

\* \* \* \* \*

**4632C. Transaction Reporting**

(a) through (b) No change.

**(c) Information To Be Reported**

Each last sale report shall contain the following information:

(1) through (3) No change.

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- (4) A symbol indicating whether the transaction is a buy, sell, sell short, [sell short exempt] or cross;
- (5) through (6) No change.
- (d) through (h) No change.

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#### **4632D. Transaction Reporting**

- (a) through (b) No change.

##### **(c) Information To Be Reported—Two Party Trade Reports**

- (1) No change.
- (2) Each two party last sale report submitted by a Reporting Member shall contain the following information:

(A) through (C) No change.

(D) A symbol indicating whether the transaction, from the perspective of the Reporting Member, is a buy, sell, sell short, [sell short exempt] or cross;

(E) If known, a designated symbol indicating whether the transaction, from the perspective of the Non-Reporting Member (or other contra party), is a buy, sell, or sell short[, or sell short exempt];

(F) through (Q) No change.

##### **(d) Information To Be Reported—Three Party Trade Reports**

- (1) No change.
- (2) Each three party trade report submitted by a Reporting Member shall contain the following information:

(A) through (H) No change.

(I) All three party trade reports from non-ECNs must be denoted as riskless principal trade reports and shall include a designated symbol indicating whether the trade between the non-ECN and the buy-side OEID is a sell[, ] or sell short[, or sell short exempt] transaction;

(J) through (T) No change.

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(U) If known, a symbol indicating whether the trade, from the Sell Side OEID's perspective, is a sell[,], or sell short[, or sell short exempt] transaction;

(V) through (X) No change.

(e) through (i) No change.

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## 4632E. Transaction Reporting

(a) through (b) No change.

### (c) Information To Be Reported—Two Party Trade Reports

(1) No change.

(2) Each two party last sale report submitted by a Reporting Member shall contain the following information:

(A) through (C) No change.

(D) A symbol indicating whether the transaction, from the perspective of the Reporting Member, is a buy, sell, sell short, [sell short exempt] or cross;

(E) If known, a designated symbol indicating whether the transaction, from the perspective of the Non-Reporting Member (or other contra party), is a buy, sell, or sell short[, or sell short exempt];

(F) through (Q) No change.

### (d) Information To Be Reported—Three Party Trade Reports

(1) No change.

(2) Each three party trade report submitted by a Reporting Member shall contain the following information:

(A) through (H) No change.

(I) All three party trade reports from non-ECNs must be denoted as riskless principal trade reports and shall include a designated symbol indicating whether the trade between the non-ECN and the buy-side OEID is a sell[,], or sell short[, or sell short exempt] transaction;

(J) through (T) No change.



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(U) If known, a symbol indicating whether the trade, from the Sell Side OEID's perspective, is a sell[,], or sell short[,], or sell short exempt] transaction;

(V) through (X) No change.

(e) through (i) No change.

\* \* \* \* \*

### **5100. [Short Sale Rule]Reserved.**

[(a) With respect to trades reported to the ADF or a Trade Reporting Facility, no member shall effect a short sale in a Nasdaq Global Market Security (as that term is defined in Rule 4200) otherwise than on an exchange for the account of a customer or for its own account at or below the current national best (inside) bid when the current national best (inside) bid is below the preceding national best (inside) bid in the security. In addition, for a transitional period ending on November 3, 2006, members may use the Nasdaq Exchange best (inside) bid rather than the national best (inside) bid for purposes of the application of this rule, provided that the member has submitted prior written notification to NASD of this selection. Members are required to use the same bid tick test on a firm-wide basis. A member using the Nasdaq Exchange best (inside) bid may not use the national best (inside) bid prior to the end of the transitional period unless the member submits prior written notification to NASD of this change. For the purposes of this rule, the term "customer" includes a non-member broker-dealer.]

[(b) In determining the price at which a short sale may be effected after a security goes ex-dividend, ex-right, or ex-any other distribution, all quotation prices prior to the "ex" date may be reduced by the value of such distribution.]

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

[(1) Sales by a registered market maker registered in the security in connection with bona fide market making activity. For purposes of this paragraph, transactions unrelated to normal market making activity, such as index arbitrage and risk arbitrage that are independent from a member's market making functions, will not be considered bona fide market making activity.]

[(2) Any sale by any person, for an account in which he has an interest, if such person owns the security sold and intends to deliver such security as soon as possible without undue inconvenience or expense.]

[(3) Sales by a member, for an account in which the member has no interest, pursuant to an order to sell that is marked "long."]

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[(4) Sales by a member to offset odd-lot orders of customers.]

[(5) Sales by a member to liquidate a long position which is less than a round lot, provided that such sale does not change the position of the member by more than one unit of trading.]

[(6) Sales by a person of a security for a special arbitrage account if the person then owns another security by virtue of which the person is, or presently will be, entitled to acquire an equivalent number of securities of the same class of securities sold; provided such a sale, or the purchase which such sale offsets, is effected for the bona fide purpose of profiting from a current difference between the price of the security sold and the security owned and that such right of acquisition was originally attached to or represented by another security or was issued to all the holders of any such class of securities of the issuer.]

[(7) Sales by a person of a security effected for a special international arbitrage account for the bona fide purpose of profiting from a current difference between the price of such security on a securities market not within or subject to the jurisdiction of the United States and on such a securities market subject to the jurisdiction of the United States; provided the person at the time of such sale knows or, by virtue of information currently received, has reasonable grounds to believe that an offer enabling the person to cover such sale is then available to the person in such foreign securities market and intends to accept such offer immediately.]

[(8) Sales by an underwriter, or any member of a syndicate or group participating in the distribution of a security, in connection with an over-allotment of securities, or any layoff sale by such a person in connection with a distribution of securities through rights or a standby underwriting commitment.]

[(9) Sales of securities as to which all short sale price tests have been suspended by operation of a Pilot Order issued by the Commission pursuant to SEC Rule 202T.]

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

[(d) No member shall effect a short sale for the account of a customer or for its own account indirectly or through the offices of a third party to avoid the application of this Rule.]

[(e) No member shall knowingly, or with reason to know, effect sales for the account of a customer or for its own account to avoid the application of this Rule.]

[(f) A member that is not currently registered as a market maker in a security and that has acquired a security while acting in the capacity of a block positioner shall be deemed to own such security for the purposes of this Rule notwithstanding that such member may not have a net long position in such security if and to the extent that such member's short position in such security is the subject of one or more offsetting positions created in the course of bona fide arbitrage, risk arbitrage, or bona fide hedge activities.]

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[(g) For purposes of this Rule, a depositary receipt of a security shall be deemed to be the same security as the security represented by such receipt.]

[(h)(1) A member shall be permitted, consistent with its quotation obligations, to execute a short sale for the account of an options market maker that would otherwise be in contravention of this Rule, if:]

[ (A) the options market maker is registered with a qualified options exchange as a qualified options market maker in a stock options class on a Nasdaq Global Market Security or an options class on a qualified stock index; and]

[ (B) the short sale is an exempt hedge transaction.]

[(2) For purposes of this paragraph:]

[(A)(i) An “exempt hedge transaction,” in the context of qualified options market makers in stock options classes, shall mean a short sale in a Nasdaq Global Market Security that was effected to hedge, and in fact serves to hedge, an existing offsetting options position or an offsetting options position that was created in a transaction(s) contemporaneous with the short sale,\* provided that when establishing the short position the options market maker is eligible to receive(s) good faith margin pursuant to Section 220.12 of Regulation T under the Act for that transaction.]

[(ii) An “exempt hedge transaction,” in the context of qualified options market makers in stock index options classes, shall mean a short sale in a Nasdaq Global Market Security that was effected to hedge, and in fact serves to hedge, an existing offsetting stock index options position or an offsetting stock index options position that was created in a transaction(s) contemporaneous with the short sale, provided that:]

[a. the security sold short is a component security of the index underlying such offsetting index options position;]

[b. the index underlying such offsetting index options position is a “qualified stock index;” and]

[c. the dollar value of all exempt short sales effected to hedge the offsetting stock index options position does not exceed the aggregate current index value of the offsetting options position.]

[(iii) Notwithstanding any other provision of this paragraph (h), any transaction unrelated to normal options market making activity, such as index arbitrage or risk arbitrage that in either case is independent of an options market maker’s market making functions, will not be considered an “exempt hedge transaction.”]

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[(B) A “qualified options market maker” shall mean an options market maker who has received an appointment as a “qualified options market maker” for certain classes of stock options on Nasdaq Global Market securities and/or index options on qualified stock indexes pursuant to the rules of a qualified options exchange.]

[(C) A “qualified options exchange” shall mean a national securities exchange that has approved rules and procedures providing for:]

[(i) designating market makers as qualified options market makers, which standards shall be designed to identify options market makers who regularly engage in market making activities in the particular options class(es);]

[(ii) the surveillance of its market maker’s utilization of the exemption set forth in paragraph (h)(1) to assure that short sales effected by qualified options market makers are exempt hedge transactions and that other non-qualified market makers are not utilizing the exemption; and]

[(iii) authorization of the Association to withdraw, suspend or modify the designation of a qualified options market maker but only if a qualified options exchange has determined that the qualified options market maker has failed to comply with the terms of the exemption, and that such a withdrawal, suspension or modification of the market maker’s exemption is warranted in light of the substantial, willful, or continuing nature of the violation.]

[(D) A “qualified stock index” shall mean any stock index that includes one or more Nasdaq Global Market securities, provided that more than 10% of the weight of the index is accounted for by Nasdaq Global Market securities and provided further that the qualification of an index as a qualified stock index shall be reviewed as of the end of each calendar quarter, and the index shall cease to qualify if the value of the index represented by one or more Nasdaq Global Market securities is less than 8% at the end of any subsequent calendar quarter.]

[(E) “Aggregate current index value” shall mean the current index value times the index multiplier.]

[(F) A member will not be in violation of paragraph (a) above if the member executes a short sale for the account of an options market maker that is in contravention of this paragraph (h), provided that the member did not know or have reason to know that the options market maker’s short sale was in contravention of this paragraph (h).]

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[(i)(1) A member shall be permitted, consistent with its quotation obligations, to execute a short sale for the account of a warrant market maker that would otherwise be in contravention of this Rule, if:]

[(A) the warrant market maker is a registered market maker for the warrant; and]

[(B) the short sale is an exempt hedge transaction that results in a fully hedged position.]

[(2) For purposes of this paragraph, an “exempt hedge transaction” shall mean a short sale in a Nasdaq Global Market Security that was effected to hedge, and in fact serves to hedge, an existing offsetting warrant position or an offsetting warrant position that was created in a transaction(s) contemporaneous with the short sale.\* Notwithstanding any other provision of this paragraph, any transaction unrelated to normal warrant market making activity, such as index arbitrage or risk arbitrage that in either case is independent of a warrant market maker’s market making functions, will not be considered an “exempt hedge transaction.”]

[(3) The Association may withdraw, suspend or modify the exemption for a warrant market maker upon determination that the market maker has failed to comply with the terms of the exemption, and that such a withdrawal, suspension or modification of the market maker’s exemption is warranted in light of the substantial, willful, or continuing nature of the violation.]

[(4) A member will not be in violation of paragraph (a) above if the member executes a short sale for the account of a warrant market maker that is in contravention of this paragraph (i), provided that the member did not know or have reason to know that the warrant market maker’s short sale was in contravention of paragraph (i).]

[(j) Pursuant to the Rule 9600 Series or on the Association’s own motion, the Association may exempt either unconditionally, or on specified terms and conditions, any transaction or class of transactions from the provisions of this Rule.]

[(k) Definitions:]

[(1) The term “short sale” shall have the same meaning as contained in SEC Rule 200, adopted pursuant to the Act.]

[(2) The term “block positioner” shall have the same meaning as contained in SEC Rule 3b-8(c) for “Qualified Block Positioner” adopted pursuant to the Act.]

[(l) This section shall be in effect until December 15, 2007.]

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## [IM-5100. Short Sale Rule]

[(a)(1) In developing a Short Sale Rule for Nasdaq Global Market securities effected otherwise than on an exchange, NASD has adopted an exemption to the Rule for certain market making activity. This exemption is an essential component of the Rule because bona fide market making activity is necessary and appropriate to maintain continuous, liquid markets in Nasdaq Global Market securities. Rule 5100(c)(1) states that short selling prohibitions shall not apply to sales by registered market makers in connection with bona fide market making activity and specifies that transactions unrelated to normal market making activity, such as index arbitrage and risk arbitrage that are independent from a member's market making functions, will not be considered as bona fide market making. Thus, two standards are to be applied: one must be a registered market maker and one must engage in "bona fide" market making activity to take advantage of this exemption. With this interpretation, NASD wishes to clarify for members some of the factors that will be taken into consideration when reviewing market making activity that may not be deemed to be bona fide market making activity and therefore would not be exempted from the Rule's application.]

[(2) First, as the Rule indicates, bona fide market making activity does not include activity that is unrelated to market making functions, such as index arbitrage and risk arbitrage that is independent from a member's market making functions. While these types of arbitrage activity appear to be suitable for the firm's overall hedging or risk management concerns, they do not warrant an exemption from the Rule. However, short sales of a security of a company involved in a merger or acquisition will be deemed bona fide market-making activity if made to hedge the purchase or prospective purchase (based on communicated indications of interest) of another security of a company involved in the merger or acquisition, which purchase was made, or is to be made, in the course of bona fide market making activity. The purchase of a security of a company involved in a merger or acquisition made to hedge a short sale of another security involved in the merger or acquisition, which sale was made in the course of bona fide market making activity, will not cause the sale to be deemed unrelated to normal market-making activity. Short sales made to hedge any such purchases or prospective purchases must be reasonably consistent with the exchange ratio (or exchange ratio formula) specified by the terms of the merger or acquisition.]

[(3) Similarly, bona fide market making would exclude activity that is related to speculative selling strategies of the member or investment decisions of the firm and is disproportionate to the usual market making patterns or practices of the member in that security. The Association does not anticipate that a firm could properly take advantage of its market maker exemption to effectuate such speculative or investment short selling decisions. Disproportionate short selling in a market making account to effectuate such strategies will be viewed by the Association as inappropriate activity that does not represent bona fide market making and would therefore be in violation of Rule 5100.]

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[(b) With respect to trades reported to the ADF or a Trade Reporting Facility, Rule 5100 requires that no member shall effect a short sale in a Nasdaq Global Market Security (as that term is defined in Rule 4200) otherwise than on an exchange for the account of a customer or for its own account at or below the current national best (inside) bid when the current national best (inside) bid is below the preceding national best (inside) bid in the security. For purposes of this rule, the term "customer" includes a non-member broker-dealer. NASD has determined that in order to effect a "legal" short sale when the current best bid is lower than the preceding best bid the short sale must be executed at a price of at least \$0.01 above the current inside bid when the current inside spread is \$0.01 or greater. The last sale report for such a trade would, therefore, be above the inside bid by at least \$0.01.]

[(c)(1) Rule 5100 prohibits a member from effecting a short sale for the account of a customer or for its own account directly or through the offices of a third party for the purpose of avoiding the application of the Short Sale Rule. Further, the Rule prohibits a member from knowingly, or with reason to know, effecting sales for the account of a customer or for its own account for the purpose of avoiding the Rule. With this interpretation, the Association wishes to clarify some of the circumstances under which a member would be deemed to be in violation of Rule 5100.]

[(2) For example, in instances where the current best bid is below the preceding best bid, if a market maker alone at the inside best bid were to lower its bid and then raise it to create an "up bid" for the purpose of facilitating a short sale, NASD would consider such activity to be a manipulative act and a violation of NASD's Short Sale Rule. NASD also would consider it a manipulative act and a violation of the Rule if a market maker with a long stock position were to raise its bid above the inside bid and then lower it to create a "down bid" for the purpose of precluding market participants from selling short. In addition, if a market maker agrees to an arrangement proposed by a member or a customer whereby the market maker raises its bid in order to effect a short sale for the other party and is protected against any loss on the trade or on any other executions effected at its new bid price, the market maker would be deemed to be in violation of Rule 5100. Similarly, a market maker would be deemed in violation of the Rule if it entered into an arrangement with a member or a customer whereby it used its exemption from the rule to sell short at the bid at successively lower prices, accumulating a short position, and subsequently offsetting those sales through a transaction at a prearranged price, for the purpose of avoiding compliance with the Rule, and with the understanding that the market maker would be guaranteed by the member or customer against losses on the trades.]

[(3) The Association believes that members' activities to circumvent the Rule through indirect actions such as executions with other members or through facilitation of customer orders while being protected from loss are antithetical to the purposes of the Rule. Accordingly, the Association will consider any such activity as a violation of Rule 5100.]

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## 6130. Trade Report Input

(a) through (c) No change.

### (d) Trade Information To Be Input

Each report to the System shall contain the following information:

(1) through (5) No change.

(6) A symbol indicating whether the transaction is a buy, sell, sell short, [sell short exempt] or cross;

(7) through (13) No change.

(e) through (i) No change.

## IM-6130. Trade Reporting of Short Sales

[The NASD's short sale rule (Short Sale Rule or Rule 5100) generally prohibits members from effecting short sales in NGM securities at or below the inside bid when the current inside bid is below the previous inside bid.] Rule 6130(d)(6) requires that members indicate on System reports whether a transaction is a short sale[ or a short sale exempt] transaction ("short sale reporting requirements"). Rule 6130 explicitly requires members to file reports [not just for NGM securities transactions, but] for [other securities] transactions in all Reportable Securities, including transactions in exchange-listed, [Capital Market,] convertible debt, OTC Bulletin Board, and OTC equity securities. Thus, all short sale transactions in these securities reported to the System must carry a "short sale" indicator [(or a "short sale exempt" indicator if it is a short sale transaction in an NGM or exchange-listed security that qualifies for an exemption from Rule 5100 or SEC Rule 10a-1)].

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## **6130C. Trade Report Input**

(a) through (c) No change.

### **(d) Trade Information To Be Input**

Each report to the System shall contain the following information:

(1) through (5) No change.

(6) A symbol indicating whether the transaction is a buy, sell, sell short, [sell short exempt] or cross;

(7) through (13) No change.

(e) through (h) No change.

## **IM-6130C. Trade Reporting of Short Sales**

[NASD's short sale rule (Short Sale Rule or Rule 5100) generally prohibits members from effecting short sales in Nasdaq Global Market ("NGM") securities at or below the inside bid when the current inside bid is below the previous inside bid.] Rule 6130C(d)(6) requires that members indicate on System reports whether a transaction is a short sale [or a short sale exempt] transaction ("short sale reporting requirements"). Rule 6130C applies to members that submit reports to the NASD/NSX Trade Reporting Facility [not just for NGM securities transactions, but] for transactions in all exchange-listed securities. Thus, all short sale transactions in these securities reported to the System must carry a "short sale" indicator [(or a "short sale exempt" indicator if it is a short sale transaction in any exchange-listed security that qualifies for an exemption from Rule 5100 or SEC Rule 10a-1)].

\* \* \* \* \*

## **6130D. Trade Report Input**

(a) through (c) No change.

### **(d) Trade Information To Be Input**

Each report to the System shall contain the following information:

(1) through (5) No change.

(6) A symbol indicating whether the transaction is a buy, sell, sell short, [sell short exempt] or cross;

(7) through (13) No change.

(e) through (h) No change.

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## **IM-6130D. Trade Reporting of Short Sales**

[NASD's short sale rule (Short Sale Rule or Rule 5100) generally prohibits members from effecting short sales in Nasdaq Global Market ("NGM") securities at or below the inside bid when the current inside bid is below the previous inside bid.] Rule 6130D(d)(6) requires that members indicate on System reports whether a transaction is a short sale [or a short sale exempt] transaction ("short sale reporting requirements"). Rule 6130D applies to members that submit reports to the NASD/BSE Trade Reporting Facility [not just for NGM securities transactions, but] for transactions in all exchange-listed securities. Thus, all short sale transactions in these securities reported to the System must carry a "short sale" indicator [(or a "short sale exempt" indicator if it is a short sale transaction in any exchange-listed security that qualifies for an exemption from Rule 5100 or SEC Rule 10a-1)].

\* \* \* \* \*

## **6130E. Trade Report Input**

(a) through (c) No change.

### **(d) Trade Information To Be Input**

Each report to the System shall contain the following information:

(1) through (5) No change.

(6) A symbol indicating whether the transaction is a buy, sell, sell short, [sell short exempt] or cross;

(7) through (13) No change.

(e) through (h) No change.

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## IM-6130E. Trade Reporting of Short Sales

[NASD's short sale rule (Short Sale Rule or Rule 5100) generally prohibits members from effecting short sales in Nasdaq Global Market ("NGM") securities at or below the inside bid when the current inside bid is below the previous inside bid.] Rule 6130E(d)(6) requires that members indicate on System reports whether a transaction is a short sale [or a short sale exempt] transaction ("short sale reporting requirements"). Rule 6130E applies to members that submit reports to the NASD/NYSE Trade Reporting Facility not just for NGM securities transactions, but for transactions in all exchange-listed securities. Thus, all short sale transactions in these securities reported to the System must carry a "short sale" indicator [(or a "short sale exempt" indicator if it is a short sale transaction in any exchange-listed security that qualifies for an exemption from Rule 5100 or SEC Rule 10a-1)].

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### 9610. Application

#### (a) Where to File

A member seeking exemptive relief as permitted under Rules 1021, 1050, 1070, 2210, 2315, 2320, 2340, 2520, 2710, 2720, 2790, 2810, 2850, 2851, 2860, Interpretive Material 2860-1, 3010(b)(2), 3020, 3150, 3230, [5100,] 6958, 8211, 8213, 11870, or 11900, or Municipal Securities Rulemaking Board Rule G-37 shall file a written application with the appropriate department or staff of NASD and provide a copy of the application to the Office of General Counsel of NASD.

(b) through (c) No change.