

March 9, 2004

Katherine A. England
Assistant Director
Division of Market Regulation
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-1001

Re: File No. SR-NASD-2004-044
Proposed Amendments Relating to Short Sale Delivery Requirements

Dear Ms. England:

Pursuant to Rule 19b-4, enclosed please find the above-numbered rule filing. Also enclosed is a 3-1/2" disk containing the rule filing in Microsoft Word 7.0 to facilitate production of the Federal Register release.

If you have any questions, please contact Stephanie M. Dumont, Office of General Counsel, Regulatory Policy and Oversight, NASD, at (202) 728-8176. The fax number of the Office of General Counsel is (202) 728-8264.

Very truly yours,

Barbara Z. Sweeney
Senior Vice President
and Corporate Secretary

Enclosures

cc: Kevin Champion

File No. SR-NASD-2004-044

Consists of 23 Pages

March 9, 2004

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C.

Form 19b-4

Proposed Rule Change

by

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

Pursuant to Rule 19b-4 under the
Securities Exchange Act of 1934

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”) a proposed rule change to replace Rule 3210 and Rule 11830 with a new rule requiring that clearing firms make delivery, or take affirmative steps to make delivery, within 10 business days after settlement date for all short sale transactions. In addition, clearing firms would be required to document and report certain information to NASD within one business day of their failure to meet the 10-day delivery requirement. Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

3210. Short Sale Delivery Requirements [Securities "Failed to Receive" and "Failed to Deliver"]

(a) Except as specifically provided herein, each member that is a clearing firm must make delivery within 10 business days after normal settlement date on all short sales, whether for a customer or a broker/dealer, in equity securities executed by or through the clearing firm or by or through any broker/dealer for which it clears.

(b) If delivery cannot be made within 10 business days after settlement date, the clearing firm must, at a minimum, have taken affirmative steps to make delivery and must continue to engage in such affirmative steps until delivery is completed. Price or cost concerns associated with borrowing or buying in the securities would not be an acceptable basis for non-compliance with paragraph (a) of this rule. Further, the clearing firm must document the affirmative steps

taken to make delivery and why delivery has not been made within the requisite time period and report this information to NASD within one business day of its failure to satisfy the 10-day delivery requirement. The clearing firm must continue to document and report such information to NASD for each business day until delivery is made.

(c) A clearing firm may request in writing from NASD an initial extension of up to five business days from the delivery and documentation requirements set forth in paragraphs (a) and (b) of this rule for any account of a market maker that sells short pursuant to bona fide market making, but only where such short position was taken to facilitate a customer purchase. The extension request must be received by NASD at least one business day in advance of the initial 10-day deadline and must include a description of the basis for the extension, including, but not limited to, an explanation of why delivery cannot be made within the 10-day period. Upon further written request by a member, NASD may grant no more than one additional extension of five days with respect to a market maker short position taken to facilitate a customer purchase. No extensions will be granted unless NASD deems the rationale and supporting information provided by the clearing firm as compelling.

(d) If delivery is not made within 10 business days after settlement date (or such longer period as may be granted by NASD pursuant to paragraph (c) of this rule), the account for which the failure to deliver occurred and all other accounts held at the clearing firm by a legal or beneficial owner of such account are restricted from selling short the security in which the failure to deliver occurred until such delivery is made. A violation of this paragraph (d) will be deemed inconsistent with Rule 2110, Standards of Commercial Honor and Principles of Trade.

(e) NASD will designate from time to time the content, format, method of transmission (including, at NASD's discretion, electronic transmission) and receiving location of any reporting requirement or request for extension of time provided for by this rule.

(f) For the purposes of this rule, the term "clearing firm" includes both clearing firms and self-clearing firms.

[(a) No member, or person associated with a member, shall sell a security for his own account, or buy a security as a broker for a customer (except exempt securities), if,

(1) in respect to domestic securities, he has a fail to deliver in that security 60 days old or older; or

(2) in respect to foreign securities, he has a fail to deliver in that security 90 days old or older (except American Depositary Receipt and Canadian securities, which shall be subject to the provisions of subparagraph (1)).

(b) Pursuant to the Rule 9600 Rule Series, for good cause shown and in exceptional circumstances, the Association may exempt a member or a person associated with a member.]

* * * * *

11830. Reserved. [Mandatory Close-Out for Short Sales]

[(a) A contract involving a short sale in Nasdaq securities described in paragraph (b) hereof, for the account of a customer or for a member's own account, which has not resulted in delivery by the broker/dealer representing the seller within 10 business days after the normal settlement date, must be closed by the broker/dealer representing the seller by purchasing for cash or guaranteed delivery securities of like kind and quantity.

(b) This requirement shall apply to Nasdaq securities, as published by the Association, which have clearing short position of 10,000 shares or more and that are equal to at least one-half (1/2) of one percent of the issue's total shares outstanding.

(c) This mandatory close-out requirement shall not apply to bona fide market making transactions and transactions that result in fully hedged or arbitrated positions.]

* * * * *

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

(a) The proposed rule change was approved by the Board of Governors of NASD at its meeting on March 1, 2004, which authorized the filing of the rule change with the SEC. Counsel for The Nasdaq Stock Market and NASD Dispute Resolution have been provided an opportunity to consult with respect to the proposed rule change, pursuant to the Plan of Allocation and Delegation of Functions by NASD to its Subsidiaries. No other action by NASD is necessary for the filing of the proposed rule change. Section 1(a)(ii) of Article VII of the NASD By-Laws permits the NASD Board of Governors to adopt NASD Rules without recourse to the membership for approval.

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. The effective date will be 90 days following publication of the Notice to Members announcing Commission approval.

(b) Questions regarding this rule filing may be directed to Stephanie M. Dumont, Office of General Counsel, Regulatory Policy and Oversight, NASD at (202) 728-8176.

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

(a) Purpose

Concerns have been raised by members, issuers, investors and other interested parties about potentially abusive short selling activities occurring in the marketplace. In particular, naked short selling, or selling short without borrowing securities to make delivery, can result in long-term failures to deliver, including aggregate failures to deliver that exceed the total float of a security. NASD believes that such extended failures to deliver can have a negative effect on the market. Among other things, by not having to deliver securities, naked short sellers can take on larger short positions than would otherwise be permissible, which can facilitate manipulative activity. Further, significant failures to deliver can impact certain rights of buyers, such as the right to vote shares or the treatment of dividends.

Existing NASD rules are designed to address the settlement of short sale transactions, but NASD has concluded that these rules need to be revised and updated to address directly the current problems occurring in the marketplace.¹ As a result, NASD is proposing to eliminate two of its current rules, Rule 11830² and Rule 3210,³ and adopt new Rule 3210, which would require clearing firms and self-clearing firms (“clearing firms”) to make delivery within 10 business days

¹ NASD recently amended Rule 3370(b) to extend its affirmative determination requirement to include short sales orders from non-member broker dealers. See Exchange Act Release No. 48788 (November 14, 2003); 68 FR 65978 (November 24, 2003) (File No. SR-NASD-2001-85).

² Rule 11830 generally mandates delivery of a security within 10 days of settlement date for short sales executed in securities that, on the trade date of the transaction, had a clearing short position equal to at least one-half of one percent of the issue's total shares outstanding. Rule 11830 only applies to Nasdaq securities and excludes bona fide market making transactions and transactions that result in fully hedged or arbitrated positions.

³ Rule 3210 prohibits members from selling a security for their own account or buying a security as a broker for a customer, if the member has a fail to deliver in that security that is 60 days old or older, or 90 days old or older for foreign securities.

after settlement date in all short sale transactions in all equity securities executed by or through the clearing firm or any broker/dealer for which it clears. If delivery cannot be made within 10 days of settlement date, the clearing firm must, at a minimum, have taken affirmative steps to make delivery and must document in detail the affirmative steps taken and why delivery has not been made within the requisite time period. The clearing firm must continuously engage in such affirmative steps and the documentation process until delivery is completed. Further, the clearing firm must report this information to NASD within one business day of its failure to meet the 10-day delivery requirement and continue to document and report such information to NASD until delivery is made.

Although the proposed rule change provides that a clearing firm may not be in violation of the rule if it has taken “affirmative steps” to make delivery, NASD expects that a failure to deliver the shares within the 10-day period will only be acceptable in very limited cases. For example, the fact that a buy-in for guaranteed delivery is available only at a price above the current market price for a security or that a member can borrow securities only at a “negative rate” (interest paid on cash collateral for securities that are borrowed to effect delivery) would not be considered acceptable bases for non-delivery by the 10th day.

Exceptions for bona fide market making and arbitrated positions that currently apply to Rule 11830 would not apply to new Rule 3210.⁴ However, to address concerns that the proposed rule change may decrease liquidity provided by market makers, the proposed rule change will permit a clearing firm to request from NASD an extension of up to five days for any account of a

⁴ It is important to note that if a member, including a market maker, sells short in successive days and such short sales result in separate fails to deliver, each daily fail to deliver is treated individually for purposes of the rule. In other words, if a member sells short on Day One and Day Two, but buys for guaranteed delivery to meet the fail resulting from the short sale on Day One, the proposed rule would be met with respect to the short sale on Day One.

market maker that sells short pursuant to bona fide market making, where such short position is taken to facilitate a customer purchase. Any extension request must be received by NASD at least one business day in advance of the initial 10-day deadline and must include a description of the basis for such extension, including, but not limited to, an explanation of why delivery cannot be made within the 10-day period. Upon further written request by a member, NASD may grant a second extension of five days, with respect to a market maker short position taken to facilitate a customer purchase, for reasons NASD deems compelling. A subsequent extension will only be granted based on extraordinary circumstances. NASD will consider, among other things, the facts and circumstances surrounding the transaction and failure to deliver, the efforts and progress of the clearing firm in making delivery, previous failures to deliver by the clearing firm or the market making account in which the failure to deliver occurred or such other factors as NASD deems relevant.

If delivery is not made within the requisite time period, the following trading restriction will apply until delivery is effected: the account which has failed to deliver against its sale, or any other accounts held at the clearing firm by the legal or beneficial owner of such account, would be restricted from selling short the same security to which the failure to deliver pertains. A violation of the trading prohibition would be deemed inconsistent with Rule 2110, Standards of Commercial Honor and Principles of Trade.

With respect to the reporting requirements and requests for extensions under the proposed rule change, NASD will designate the content, format, method of transmission (including, at NASD's discretion, electronic transmission) and receiving location of such requirements, which it may change from time to time, upon adequate notice to the membership.

NASD believes the proposed rule change will be more effective than current rules in reducing failures to deliver in the marketplace. The proposed rule change will impose delivery requirements consistently to all short sale transactions in all equity securities. In addition, the proposed rule change will impede and constrain the practice of abusive short selling, which gains its efficacy, in part, by selling securities short without any intention or act of making delivery of the security to the buyer.

NASD staff is aware that some members may need to modify systems, procedures and records to comply with the proposed rule change. To allow members adequate time to develop and implement systems to comply with the proposed rule change, NASD is proposing an implementation date of 90 days after the issuance of a Notice to Members announcing SEC approval of the proposed rule change.

Through the Committee and Board review and approval process, a number of issues were raised to NASD staff that it believes warrant further opportunity for comment. As such, NASD requests that the SEC, in its Release giving notice of filing of this proposed rule change, specifically solicit comment on the following issues that have been raised with NASD staff:

(1) What impact will the lack of a market maker exemption have on liquidity for securities? Is the availability of an extension of time for delivery of certain market making transactions sufficient to balance potential liquidity concerns and the uniform enforcement of the proposed delivery requirements? In addition, what facts or circumstances would be appropriate to warrant a second extension of five days for market makers under the proposed rule change?

(2) What changes to clearing firm systems and processes will be necessary to comply with the proposed rule change? What are the approximate costs of such changes and what amount of

time after approval of the proposed rule change would be sufficient to permit clearing firms to develop and implement these changes?

(3) Under the proposed rule change, the clearing firm is the party required to ensure compliance with the rule. Is the clearing firm in the best position to comply with the proposed rule change, or should the introducing firm/correspondent firm that executes the short sale order generating the failure to deliver be jointly or solely responsible?

(4) As noted herein, the proposed rule change is prompted by concerns that naked short selling and the failures to deliver that can result from naked short selling facilitate manipulative activity and can have a negative impact on certain rights of buyers, such as the right to vote shares or the treatment of dividends. Are there additional adverse consequences of naked short selling and large-scale, extended failures to deliver that may warrant additional or different measures?

As appropriate, the NASD can work with the Commission in identifying other specific issues on which to solicit comment.

(b) Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change will reduce the amount of extended failures to deliver in securities and will enhance the integrity of the market and the clearance and settlement system.

4. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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

Written comments were neither solicited nor received.

6. Extension of Time Period for Commission Action

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)

Not applicable.

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

Not applicable.

9. Exhibits

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

Pursuant to the requirements of the Securities Exchange Act of 1934, NASD has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

NASD, INC.

BY: _____
Barbara Z. Sweeney
Senior Vice President and Corporate Secretary

Date: March 9, 2004

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-NASD-2004-044)

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Short Sale Delivery Requirements

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”) 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 replace Rule 3210 and Rule 11830 with a new rule requiring that clearing firms make delivery, or take affirmative steps to make delivery, within 10 business days after settlement date for all short sale transactions. In addition, clearing firms would be required to document and report certain information to NASD within one business day of their failure to meet the 10-day delivery requirement. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

3210. Short Sale Delivery Requirements [Securities "Failed to Receive" and "Failed to Deliver"]

(a) Except as specifically provided herein, each member that is a clearing firm must make delivery within 10 business days after normal settlement date on all short sales, whether for a customer or a broker/dealer, in equity securities executed by or through the clearing firm or by or through any broker/dealer for which it clears.

(b) If delivery cannot be made within 10 business days after settlement date, the clearing firm must, at a minimum, have taken affirmative steps to make delivery and must continue to engage in such affirmative steps until delivery is completed. Price or cost concerns associated with borrowing or buying in the securities would not be an acceptable basis for non-compliance with paragraph (a) of this rule. Further, the clearing firm must document the affirmative steps taken to make delivery and why delivery has not been made within the requisite time period and report this information to NASD within one business day of its failure to satisfy the 10-day delivery requirement. The clearing firm must continue to document and report such information to NASD for each business day until delivery is made.

(c) A clearing firm may request in writing from NASD an initial extension of up to five business days from the delivery and documentation requirements set forth in paragraphs (a) and (b) of this rule for any account of a market maker that sells short pursuant to bona fide market making, but only where such short position was taken to facilitate a customer purchase. The extension request must be received by NASD at least one business day in advance of the initial 10-day deadline and must include a description of the basis for the extension, including, but not limited to, an explanation of why delivery cannot be made within the 10-day period. Upon further

written request by a member, NASD may grant no more than one additional extension of five days with respect to a market maker short position taken to facilitate a customer purchase. No extensions will be granted unless NASD deems the rationale and supporting information provided by the clearing firm as compelling.

(d) If delivery is not made within 10 business days after settlement date (or such longer period as may be granted by NASD pursuant to paragraph (c) of this rule), the account for which the failure to deliver occurred and all other accounts held at the clearing firm by a legal or beneficial owner of such account are restricted from selling short the security in which the failure to deliver occurred until such delivery is made. A violation of this paragraph (d) will be deemed inconsistent with Rule 2110, Standards of Commercial Honor and Principles of Trade.

(e) NASD will designate from time to time the content, format, method of transmission (including, at NASD's discretion, electronic transmission) and receiving location of any reporting requirement or request for extension of time provided for by this rule.

(f) For the purposes of this rule, the term "clearing firm" includes both clearing firms and self-clearing firms.

[(a) No member, or person associated with a member, shall sell a security for his own account, or buy a security as a broker for a customer (except exempt securities), if,

(1) in respect to domestic securities, he has a fail to deliver in that security 60 days old or older; or

(2) in respect to foreign securities, he has a fail to deliver in that security 90 days old or older (except American Depositary Receipt and Canadian securities, which shall be subject to the provisions of subparagraph (1)).

(b) Pursuant to the Rule 9600 Rule Series, for good cause shown and in exceptional circumstances, the Association may exempt a member or a person associated with a member.]

* * * * *

11830. Reserved. [Mandatory Close-Out for Short Sales]

[(a) A contract involving a short sale in Nasdaq securities described in paragraph (b) hereof, for the account of a customer or for a member's own account, which has not resulted in delivery by the broker/dealer representing the seller within 10 business days after the normal settlement date, must be closed by the broker/dealer representing the seller by purchasing for cash or guaranteed delivery securities of like kind and quantity.

(b) This requirement shall apply to Nasdaq securities, as published by the Association, which have clearing short position of 10,000 shares or more and that are equal to at least one-half (1/2) of one percent of the issue's total shares outstanding.

(c) This mandatory close-out requirement shall not apply to bona fide market making transactions and transactions that result in fully hedged or arbitrated positions.]

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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

Concerns have been raised by members, issuers, investors and other interested parties about potentially abusive short selling activities occurring in the marketplace. In particular, naked short selling, or selling short without borrowing securities to make delivery, can result in long-term failures to deliver, including aggregate failures to deliver that exceed the total float of a security. NASD believes that such extended failures to deliver can have a negative effect on the market. Among other things, by not having to deliver securities, naked short sellers can take on larger short positions than would otherwise be permissible, which can facilitate manipulative activity. Further, significant failures to deliver can impact certain rights of buyers, such as the right to vote shares or the treatment of dividends.

Existing NASD rules are designed to address the settlement of short sale transactions, but NASD has concluded that these rules need to be revised and updated to address directly the current problems occurring in the marketplace.³ As a result, NASD is proposing to eliminate two of its current rules, Rule 11830⁴ and Rule 3210,⁵ and adopt new Rule 3210, which would require clearing firms and self-clearing firms (“clearing firms”) to make delivery within 10 business days

³ NASD recently amended Rule 3370(b) to extend its affirmative determination requirement to include short sales orders from non-member broker dealers. See Exchange Act Release No. 48788 (November 14, 2003); 68 FR 65978 (November 24, 2003) (File No. SR-NASD-2001-85).

⁴ Rule 11830 generally mandates delivery of a security within 10 days of settlement date for short sales executed in securities that, on the trade date of the transaction, had a clearing short position equal to at least one-half of one percent of the issue's total shares outstanding. Rule 11830 only applies to Nasdaq securities and excludes bona fide market making transactions and transactions that result in fully hedged or arbitrated positions.

after settlement date in all short sale transactions in all equity securities executed by or through the clearing firm or any broker/dealer for which it clears. If delivery cannot be made within 10 days of settlement date, the clearing firm must, at a minimum, have taken affirmative steps to make delivery and must document in detail the affirmative steps taken and why delivery has not been made within the requisite time period. The clearing firm must continuously engage in such affirmative steps and the documentation process until delivery is completed. Further, the clearing firm must report this information to NASD within one business day of its failure to meet the 10-day delivery requirement and continue to document and report such information to NASD until delivery is made.

Although the proposed rule change provides that a clearing firm may not be in violation of the rule if it has taken “affirmative steps” to make delivery, NASD expects that a failure to deliver the shares within the 10-day period will only be acceptable in very limited cases. For example, the fact that a buy-in for guaranteed delivery is available only at a price above the current market price for a security or that a member can borrow securities only at a “negative rate” (interest paid on cash collateral for securities that are borrowed to effect delivery) would not be considered acceptable bases for non-delivery by the 10th day.

Exceptions for bona fide market making and arbitrated positions that currently apply to Rule 11830 would not apply to new Rule 3210.⁶ However, to address concerns that the proposed

⁵ Rule 3210 prohibits members from selling a security for their own account or buying a security as a broker for a customer, if the member has a fail to deliver in that security that is 60 days old or older, or 90 days old or older for foreign securities.

⁶ It is important to note that if a member, including a market maker, sells short in successive days and such short sales result in separate fails to deliver, each daily fail to deliver is treated individually for purposes of the rule. In other words, if a member sells short on Day One and Day Two, but buys for guaranteed

rule change may decrease liquidity provided by market makers, the proposed rule change will permit a clearing firm to request from NASD an extension of up to five days for any account of a market maker that sells short pursuant to bona fide market making, where such short position is taken to facilitate a customer purchase. Any extension request must be received by NASD at least one business day in advance of the initial 10-day deadline and must include a description of the basis for such extension, including, but not limited to, an explanation of why delivery cannot be made within the 10-day period. Upon further written request by a member, NASD may grant a second extension of five days, with respect to a market maker short position taken to facilitate a customer purchase, for reasons NASD deems compelling. A subsequent extension will only be granted based on extraordinary circumstances. NASD will consider, among other things, the facts and circumstances surrounding the transaction and failure to deliver, the efforts and progress of the clearing firm in making delivery, previous failures to deliver by the clearing firm or the market making account in which the failure to deliver occurred or such other factors as NASD deems relevant.

If delivery is not made within the requisite time period, the following trading restriction will apply until delivery is effected: the account which has failed to deliver against its sale, or any other accounts held at the clearing firm by the legal or beneficial owner of such account, would be restricted from selling short the same security to which the failure to deliver pertains. A violation of the trading prohibition would be deemed inconsistent with Rule 2110, Standards of Commercial Honor and Principles of Trade.

delivery to meet the fail resulting from the short sale on Day One, the proposed rule would be met with respect to the short sale on Day One.

With respect to the reporting requirements and requests for extensions under the proposed rule change, NASD will designate the content, format, method of transmission (including, at NASD's discretion, electronic transmission) and receiving location of such requirements, which it may change from time to time, upon adequate notice to the membership.

NASD believes the proposed rule change will be more effective than current rules in reducing failures to deliver in the marketplace. The proposed rule change will impose delivery requirements consistently to all short sale transactions in all equity securities. In addition, the proposed rule change will impede and constrain the practice of abusive short selling, which gains its efficacy, in part, by selling securities short without any intention or act of making delivery of the security to the buyer.

NASD staff is aware that some members may need to modify systems, procedures and records to comply with the proposed rule change. To allow members adequate time to develop and implement systems to comply with the proposed rule change, NASD is proposing an implementation date of 90 days after the issuance of a Notice to Members announcing SEC approval of the proposed rule change.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change will reduce the amount of extended failures to deliver in securities and will enhance the integrity of the market and the clearance and settlement system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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

Written comments were neither solicited nor received.

III. DATE OF EFFECTIVENESS OF THE PROPOSED RULE CHANGE AND TIMING FOR COMMISSION ACTION

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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments may also be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR-XXXX-XXXX-XX. This file number should be included on the

subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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. Copies of such filing will also be available for inspection and copying at the principal office of NASD. All submissions should refer to the file number in the caption above and should be submitted by [insert date 21 days from the date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland
Deputy Secretary