

OMB APPROVAL

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Page 1 of 11

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. SR - 2005 - 001
Amendment No.

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

Initial ☒	Amendment ☐	Withdrawal ☐	Section 19(b)(2) ☐	Section 19(b)(3)(A) ☒	Section 19(b)(3)(B) ☐
			Rule		
			☐ 19b-4(f)(1) ☐ 19b-4(f)(4)		
			☐ 19b-4(f)(2) ☐ 19b-4(f)(5)		
			☐ 19b-4(f)(3) ☒ 19b-4(f)(6)		

Exhibit 2 Sent As Paper Document
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Exhibit 3 Sent As Paper Document
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Description

Provide a brief description of the proposed rule change (limit 250 characters).

Proposed rule change to amend NASD Rule 3360 to change references from "SEC Rule 3b-3" to SEC Rule 200," thereby conforming the rule language in Rule 3360 in light of the SEC's new short sale regulation, Regulation SHO.

Contact Information

Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name Andrea Last Name Orr
Title Assistant General Counsel
E-mail andrea.orr@nasd.com
Telephone (202) 728-8156 Fax (202) 728-8264

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 01/07/2005

By Patrice M. Gliniecki
(Name)

Senior Vice President & Deputy General Counsel

(Title)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

PATRICE GLINIECKI,

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EDFS website.

Form 19b-4 Information

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit Sent As Paper Document

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Exhibit 3 - Form, Report, or Questionnaire

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Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit Sent As Paper Document

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Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(3) 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 amend NASD Rule 3360 to change references from "SEC Rule 3b-3" to "SEC Rule 200," thereby conforming the rule language in Rule 3360 in light of the SEC's new short sale regulation, Regulation SHO. Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

3360. Short-Interest Reporting

(a) No change.

(b) For purposes of this Rule, "short" positions to be reported are those resulting from "short sales" as that term is defined in SEC Rule 200[3b-3,] of Regulation SHO, with the exception of positions that meet the requirements of Subsections (e)(1), (6), (7), (8), [(9),] and (10) of SEC Rule 10a-1 adopted under the Act.

* * * * *

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by the Board of Governors of NASD ("Board") and authorized for filing with the SEC pursuant to a delegation of authority granted by the Board at its meeting on July 22, 2004, to the General Counsel of NASD Regulatory Policy and

Oversight (or his officer designee) to file, without further specific Board authorization, administrative, technical, conforming, and non-substantive changes to NASD rules ("Delegation of Authority"). Counsel for The Nasdaq Stock Market and NASD Dispute Resolution were 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. The staff will advise the Board of any action taken pursuant to the Delegation of Authority. No other action by NASD is necessary for the filing of the proposed rule change. Section 1(a)(ii) of Article VII of the NASD By-Laws permits the Board of Governors of NASD to adopt amendments to NASD Rules without recourse to the membership for approval. NASD has filed the proposed rule change for immediate effectiveness. The effective date and the implementation date will be the date of filing, January 7, 2005.

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

(a) Purpose

On June 23, 2004, the SEC adopted certain provisions of a new short sale regulation, designated Regulation SHO (Reg SHO).¹ Reg SHO includes, among other provisions, a new SEC Rule 200, which among other things, incorporates SEC Rule 3b-3 under the Act with some modifications to define ownership and aggregation of securities positions, and includes a requirement to mark all sell orders in all equity securities. SEC Rule 3b-3 was repealed and reserved. The compliance date for SEC Rule 200 of Reg SHO was January 3, 2005.

Given that SEC Rule 3b-3 is now incorporated in the new SEC Rule 200 established by Reg SHO, NASD is proposing to amend Rule 3360 to replace the reference to "SEC Rule 3b-3"

¹ See Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008 (August 6, 2004).

with "SEC Rule 200," thereby conforming the rule language in Rule 3360 in light of Reg SHO. NASD has filed the proposed rule change for immediate effectiveness. The effective date and the implementation date will be the date of filing, January 7, 2005.

(b) Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that NASD rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that conforming references in Rule 3360 to new SEC Rule 200 in recently adopted Reg SHO will more easily identify the appropriate definitions of "short sales."

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

Not applicable.

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

The proposed rule change is effective upon filing pursuant to Section 19(b)(3) of the Act and paragraph (f)(6) of Rule 19b-4 thereunder, in that the proposed rule change does not significantly affect the protection of investors or the public interest; does not impose any

significant burden on competition; and does not become operative for 30 days after filing (subject to waiver by the Commission). NASD requests that the Commission waive the requirement that written notice of NASD's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, be submitted at least five business days prior to the date of filing. In addition, NASD requests that the Commission waive the 30-day operative delay set forth in Rule 19b-4(f)(6)(iii) so that these technical amendments may be made without delay. NASD has filed the proposed rule change for immediate effectiveness. The effective date and the implementation date will be the date of filing, January 7, 2005.

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

Not applicable.

9. Exhibits

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

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-NASD-2005-001)

SELF-REGULATORY ORGANIZATIONS

Proposed Rule Change by National Association of Securities Dealers, Inc.
Relating to Changes to Rule 3360 in Light of the SEC Regulation SHO

Pursuant to Section 19(b)(3) 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. NASD has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,³ which renders the proposal effective upon receipt of this filing by the Commission. 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 NASD Rule 3360 to change references from "SEC Rule 3b-3" to "SEC Rule 200," thereby conforming the rule language in Rule 3360 in light of the SEC’s new short sale regulation, Regulation SHO. 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)(3).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4.

* * * * *

3360. Short-Interest Reporting

(a) No change.

(b) For purposes of this Rule, "short" positions to be reported are those resulting from "short sales" as that term is defined in SEC Rule 200[3b-3,] of Regulation SHO, with the exception of positions that meet the requirements of Subsections (e)(1), (6), (7), (8), [(9),] and (10) of SEC Rule 10a-1 adopted under the Act.

* * * * *

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

On June 23, 2004, the SEC adopted certain provisions of a new short sale regulation, designated Regulation SHO (Reg SHO).⁴ Reg SHO includes, among other provisions, a new SEC Rule 200, which among other things, incorporates SEC Rule 3b-3 under the Act with some modifications to define ownership and aggregation of securities positions, and includes a

⁴ See Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008 (August 6, 2004).

requirement to mark all sell orders in all equity securities. SEC Rule 3b-3 was repealed and reserved. The compliance date for SEC Rule 200 of Reg SHO was January 3, 2005.

Given that SEC Rule 3b-3 is now incorporated in the new SEC Rule 200 established by Reg SHO, NASD is proposing to amend Rule 3360 to replace the reference to "SEC Rule 3b-3" with "SEC Rule 200," thereby conforming the rule language in Rule 3360 in light of Reg SHO. NASD has filed the proposed rule change for immediate effectiveness. The effective date and the implementation date will be the date of filing, January 7, 2005.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that NASD rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that conforming references in Rule 3360 to new SEC Rule 200 in recently adopted Reg SHO will more easily identify the appropriate definitions of "short sales."

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

Because the foregoing proposed rule change does not:

(i) significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASD-2005-001 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-NASD-2005-001. 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, 450 Fifth Street, NW, 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-2005-001 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

Secretary

⁵

17 CFR 200.30-3(a)(12).