

OMB APPROVAL

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

File No. SR - 2006 - 087

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) ☐
Pilot ☐			Rule		
Extension of Time Period for Commission Action ☐			☐ 19b-4(f)(1) ☐ 19b-4(f)(4) ☐ 19b-4(f)(2) ☐ 19b-4(f)(5) ☐ 19b-4(f)(3) ☒ 19b-4(f)(6)		
Date Expires 					

Exhibit 2 Sent As Paper Document



Exhibit 3 Sent As Paper Document

**Description**

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

Proposed rule change to amend NASD Rule 5110 and to make technical, non-substantive changes to certain other NASD rules amended by approved rule change SR-NASD-2005-087

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 Last Name
Title
E-mail
Telephone Fax

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 By
(Name)

(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.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF 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

Add Remove View

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

Add Remove View

Exhibit Sent As Paper Document

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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 3 - Form, Report, or Questionnaire

Add Remove View

Exhibit Sent As Paper Document

☐

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 4 - Marked Copies

Add Remove View

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

Add Remove View

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

Add Remove View

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)(1) of the Securities Exchange Act of 1934 (“Act”),¹ the National Association of Securities Dealers, Inc. (“NASD”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to (1) amend NASD Rule 5110 to clarify that the rule is applicable to both Nasdaq and non-Nasdaq exchange-listed securities; and (2) make technical, non-substantive changes to certain other NASD rules that were amended by proposed rule change SR-NASD-2005-087.² Rule 5110 and the other amendments to NASD rules proposed by SR-NASD-2005-087 will become effective on the date upon which The Nasdaq Stock Market LLC (the “Nasdaq Exchange”) operates as a national securities exchange for Nasdaq-listed securities. Currently, that date is projected to be August 1, 2006.

The text of the proposed rule change is attached as Exhibit 5 to this rule filing.

* * * * *

(b) Not applicable.

(c) Not applicable.

¹ 15 U.S.C. 78s(b)(1).

² NASD filed SR-NASD-2005-087 on July 11, 2005 and Amendment No. 1 on June 15, 2006. The Commission approved SR-NASD-2005-087, as amended, on June 30, 2006. See Exchange Act Release No. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006) (the “June 30 Approval Order”).

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved on June 9, 2005 by the Executive Committee of the Board of Governors of NASD, which authorized the filing of the rule change with the Commission. 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 of the proposed rule change will be the date on which the Nasdaq Exchange commences operation as a national securities exchange for Nasdaq-listed securities, which is the effective date of SR-NASD-2005-087.

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

(a) Purpose

On June 30, 2006, the Commission approved SR-NASD-2005-087.³ Among other things, SR-NASD-2005-087 proposed (1) amendments to the NASD Delegation Plan, NASD By-Laws and NASD rules to reflect a proposed phased implementation strategy for the operation of the Nasdaq Exchange as a national securities exchange with respect to Nasdaq-listed securities during a transitional period, and (2) rules for reporting transactions effected otherwise than on an exchange to the new Trade Reporting Facility.

³

Id.

NASD is filing this proposed rule change in anticipation of SR-NASD-2005-087 becoming effective to (1) amend Rule 5110 to clarify that the rule is applicable to both Nasdaq and non-Nasdaq exchange-listed securities; and (2) make technical, non-substantive changes to certain other NASD rules that were amended by SR-NASD-2005-087.

Amendments to Rule 5110

Pursuant to SR-NASD-2005-087, NASD proposed to renumber Rule 6440(i) as Rule 5110 and extend its application to Nasdaq exchange-listed securities. Currently, the rule prohibits members from executing otherwise than on an exchange a transaction in a security subject to an initial public offering until such security has first opened for trading on the national securities exchange listing the security, as indicated by the dissemination of an opening transaction in the security by the listing exchange via the Consolidated Tape.

As described in footnote 23 of the June 30 Approval Order, NASD is proposing to amend Rule 5110 to delete the reference to dissemination of the opening transaction “via the Consolidated Tape.” Pursuant to SR-NASD-2005-087, Rule 5110 is intended to apply to both Nasdaq and non-Nasdaq exchange-listed securities. As such, the reference in the rule to the Consolidated Tape is too narrow given that transactions in securities listed on the Nasdaq Exchange are reported to the Nasdaq Unlisted Trading Privileges Plan.

Technical, Non-Substantive Amendments

NASD is proposing a number of grammatical and technical, non-substantive changes to certain NASD rules that were amended by SR-NASD-2005-087.

Rules 4120A, 4633 and 6431 give NASD authority to halt trading on the ADF and trading reported to the Trade Reporting Facility, with respect to Nasdaq-listed securities, and trading otherwise than on an exchange with respect to non-Nasdaq exchange-listed securities, respectively. These rules are intended to be consistent in their language and application. Accordingly, NASD is proposing to amend Rule 4633(a)(2)(C)(i) and (ii) and Rule 6431(a)(2)(C)(i) and (ii) by replacing the word “believes” with the word “determines.” The proposed change would conform the language of these rules to the language of Rule 4120A(a)(2)(C)(i) and (ii).⁴

NASD is also proposing to amend Rule 4633 to change references to trading halts “on” or “in” the Trade Reporting Facility to “reported to” the Trade Reporting Facility, to clarify that trades are not executed on the Trade Reporting Facility.

In addition, SR-NASD-2005-087 inadvertently renumbered subparagraphs (MM) through (PP) of Rule 2860(b)(2) as (KK) through (OO). These subparagraphs should have been renumbered (KK) through (NN). As a result, there currently is no

⁴ Specifically, each rule grants NASD authority to halt trades in a particular security, including in the event of extraordinary market activity in the security. Rule 4120A(a)(2)(C)(i) and (ii) provides that NASD may exercise this authority if it “determines” that such activity is caused by the misuse or malfunction of a system operated by or linked to NASD or a national securities exchange. In

subparagraph (OO). Therefore, the proposed rule change would renumber the rule's subparagraphs (PP) through (AAA) as (OO) through (ZZ).

Finally, several rule changes that were approved by the Commission and implemented subsequent to the filing of Amendment No. 1 to SR-NASD-2005-087 change the underlying or proposed text provided in Exhibit 5 of SR-NASD-2005-087. As a result, NASD is proposing changes to the rule text approved pursuant to SR-NASD-2005-087 to make it consistent with the other recently approved rule changes. These include the following rule changes along with the rules affected: SR-NASD-2000-023 amended Rules 6951 and 6954; SR-NASD-2005-098 amended Rule 6740 (renumbered as Rule 6640 pursuant to SR-NASD-2005-087); SR-NASD-2006-040 amended Rule 9610; and SR-NASD-2006-080 amended Rule 4901. In addition, the "Nasdaq National Market" was recently renamed the "Nasdaq Global Market," and pursuant to SR-NASD-2006-068, a number of rules were amended to change "Nasdaq National Market," "NNM" or "Nasdaq National Market securities" to "Nasdaq Global Market," "NGM" or "Nasdaq Global Market securities," respectively.

As noted in Item 2 of this filing, NASD has filed the proposed rule change for immediate effectiveness. The effective date will be the date upon which the Nasdaq Exchange operates as a national securities exchange for Nasdaq-listed securities, which is the effective date of SR-NASD-2005-087.

otherwise identical provisions, Rule 4633(a)(2)(C)(i) and (ii) and Rule 6431(a)(2)(C)(i) and (ii) use the word "believes" instead of "determines."

(b) Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁵ which requires, among other things, that NASD rules 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 relating to Rule 5110 will result in uniform regulation of securities that are subject to an initial public offering. In addition, NASD believes that the proposed rule change will enhance the integrity of the market by increasing the consistency and clarity of its rules.

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

⁵ 15 U.S.C. 78o-3(b)(6).

the Act and paragraph (f)(6) of Rule 19b-4 thereunder,⁶ 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). In accordance with Rule 19b-4, NASD submitted written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing. In addition, NASD requests that the Commission waive the requirement that the rule change not become operative for 30 days after the date of the filing, as set forth in Rule 19b-4(f)(6)(iii) because SR-NASD-2005-087 may become effective prior to the end of such 30-day period.⁷ If the Commission grants such waiver, the proposed rule change will become effective on the same date that SR-NASD-2005-087 becomes effective.

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.

⁶ 17 CFR 240.19b-4(f)(6).

⁷ As noted above, the Nasdaq Exchange is currently scheduled to commence operating as a national securities exchange with respect to Nasdaq-listed securities on August 1, 2006.

Exhibit 5. Text of proposed rule change marked to show additions to and deletions from the current rule language.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-NASD-2006-087)

Self-Regulatory Organizations: National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to NASD Rule 5110 and Certain Other NASD Rules Amended Pursuant to SR-NASD-2005-087

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. 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. NASD proposes to make the proposed rule change effective on the date on which the Nasdaq Stock Market LLC (the "Nasdaq Exchange") commences operation as a national securities exchange for Nasdaq-listed securities. 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 (1) amend NASD Rule 5110 to clarify that the rule is

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4.

applicable to both Nasdaq and non-Nasdaq exchange-listed securities; and (2) make technical, non-substantive changes to certain other NASD rules that were amended by proposed rule change SR-NASD-2005-087.⁴ Rule 5110 and the other amendments to NASD rules proposed by SR-NASD-2005-087 will become effective on the date upon which the Nasdaq Exchange operates as a national securities exchange for Nasdaq-listed securities. Currently, that date is projected to be August 1, 2006.

The text of the proposed rule change is attached as Exhibit 5 to this rule filing.

* * * * *

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 30, 2006, the Commission approved SR-NASD-2005-087.⁵ Among other things, SR-NASD-2005-087 proposed (1) amendments to the NASD Delegation

⁴ NASD filed SR-NASD-2005-087 on July 11, 2005 and Amendment No. 1 on June 15, 2006. The Commission approved SR-NASD-2005-087, as amended, on June 30, 2006. See Exchange Act Release No. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006) (the "June 30 Approval Order").

⁵ Id.

Plan, NASD By-Laws and NASD rules to reflect a proposed phased implementation strategy for the operation of the Nasdaq Exchange as a national securities exchange with respect to Nasdaq-listed securities during a transitional period, and (2) rules for reporting transactions effected otherwise than on an exchange to the new Trade Reporting Facility. NASD is filing this proposed rule change in anticipation of SR-NASD-2005-087 becoming effective to (1) amend Rule 5110 to clarify that the rule is applicable to both Nasdaq and non-Nasdaq exchange-listed securities; and (2) make technical, non-substantive changes to certain other NASD rules that were amended by SR-NASD-2005-087.

Amendments to Rule 5110

Pursuant to SR-NASD-2005-087, NASD proposed to renumber Rule 6440(i) as Rule 5110 and extend its application to Nasdaq exchange-listed securities. Currently, the rule prohibits members from executing otherwise than on an exchange a transaction in a security subject to an initial public offering until such security has first opened for trading on the national securities exchange listing the security, as indicated by the dissemination of an opening transaction in the security by the listing exchange via the Consolidated Tape.

As described in footnote 23 of the June 30 Approval Order, NASD is proposing to amend Rule 5110 to delete the reference to dissemination of the opening transaction “via the Consolidated Tape.” Pursuant to SR-NASD-2005-087, Rule 5110 is intended to apply to both Nasdaq and non-Nasdaq exchange-listed securities. As such, the reference in the rule to the Consolidated Tape is too narrow given that transactions in securities listed on the Nasdaq Exchange are reported to the Nasdaq Unlisted Trading Privileges

Plan.

Technical, Non-Substantive Amendments

NASD is proposing a number of grammatical and technical, non-substantive changes to certain NASD rules that were amended by SR-NASD-2005-087.

Rules 4120A, 4633 and 6431 give NASD authority to halt trading on the ADF and trading reported to the Trade Reporting Facility, with respect to Nasdaq-listed securities, and trading otherwise than on an exchange with respect to non-Nasdaq exchange-listed securities, respectively. These rules are intended to be consistent in their language and application. Accordingly, NASD is proposing to amend Rule 4633(a)(2)(C)(i) and (ii) and Rule 6431(a)(2)(C)(i) and (ii) by replacing the word “believes” with the word “determines.” The proposed change would conform the language of these rules to the language of Rule 4120A(a)(2)(C)(i) and (ii).⁶

NASD is also proposing to amend Rule 4633 to change references to trading halts “on” or “in” the Trade Reporting Facility to “reported to” the Trade Reporting Facility, to clarify that trades are not executed on the Trade Reporting Facility.

In addition, SR-NASD-2005-087 inadvertently renumbered subparagraphs (MM) through (PP) of Rule 2860(b)(2) as (KK) through (OO). These subparagraphs should have been renumbered (KK) through (NN). As a result, there currently is no subparagraph (OO). Therefore, the proposed rule change would renumber the rule’s

⁶ Specifically, each rule grants NASD authority to halt trades in a particular security, including in the event of extraordinary market activity in the security. Rule 4120A(a)(2)(C)(i) and (ii) provides that NASD may exercise this authority if it “determines” that such activity is caused by the misuse or malfunction of a system operated by or linked to NASD or a national securities exchange. In otherwise identical provisions, Rule 4633(a)(2)(C)(i) and (ii) and Rule 6431(a)(2)(C)(i) and (ii) use the word “believes” instead of “determines.”

subparagraphs (PP) through (AAA) as (OO) through (ZZ).

Finally, several rule changes that were approved by the Commission and implemented subsequent to the filing of Amendment No. 1 to SR-NASD-2005-087 change the underlying or proposed text provided in Exhibit 5 of SR-NASD-2005-087. As a result, NASD is proposing changes to the rule text approved pursuant to SR-NASD-2005-087 to make it consistent with the other recently approved rule changes. These include the following rule changes along with the rules affected: SR-NASD-2000-023 amended Rules 6951 and 6954; SR-NASD-2005-098 amended Rule 6740 (renumbered as Rule 6640 pursuant to SR-NASD-2005-087); SR-NASD-2006-040 amended Rule 9610; and SR-NASD-2006-080 amended Rule 4901. In addition, the “Nasdaq National Market” was recently renamed the “Nasdaq Global Market,” and pursuant to SR-NASD-2006-068, a number of rules were amended to change “Nasdaq National Market,” “NNM” or “Nasdaq National Market securities” to “Nasdaq Global Market,” “NGM” or “Nasdaq Global Market securities,” respectively.

As noted in Item 2 of this filing, NASD has filed the proposed rule change for immediate effectiveness. The effective date will be the date upon which the Nasdaq Exchange operates as a national securities exchange for Nasdaq-listed securities, which is the effective date of SR-NASD-2005-087.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁷ which requires, among other things, that NASD rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and

⁷ 15 U.S.C. 78o-3(b)(6).

equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change relating to Rule 5110 will result in uniform regulation of securities that are subject to an initial public offering. In addition, NASD believes that the proposed rule change will enhance the integrity of the market by increasing the consistency and clarity of its rules.

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.⁸

In accordance with Rule 19b-4, NASD submitted written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule

⁸ 17 CFR 240.19b-4(f)(6).

change, at least five business days prior to the date of filing. In addition, NASD has requested that the Commission waive the requirement that the rule change not become operative for 30 days after the date of the filing, as set forth in Rule 19b-4(f)(6)(iii) because SR-NASD-2005-087 may become effective prior to the end of such 30-day period.⁹ If the Commission grants such waiver, the proposed rule change will become effective on the same date that SR-NASD-2005-087 becomes effective.

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-2006-087 on the subject line.

Paper Comments:

⁹ As noted above, the Nasdaq Exchange is currently scheduled to commence operating as a national securities exchange with respect to Nasdaq-listed securities on August 1, 2006.

- Send paper comments in triplicate to Nancy M. Morris, Secretary,
Securities and Exchange Commission, 100 F Street, NE, Washington, DC
20549-1090.

All submissions should refer to File Number SR-NASD-2006-087. 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. 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 File Number SR-NASD-2006-087 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.¹⁰

Nancy M. Morris

Secretary

¹⁰ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.¹

* * * * *

2300. TRANSACTIONS WITH CUSTOMERS

2310. Recommendations to Customers (Suitability)

* * * * *

IM-2310-2. Fair Dealing with Customers

(a) through (d) No Change.

(e) Fair Dealing with Customers with Regard to Derivative Products or New Financial Products

The Board emphasizes members' obligations for fair dealing with customers when making recommendations or accepting orders for new financial products. As new products are introduced from time to time, it is important that members make every effort to familiarize themselves with each customer's financial situation, trading experience, and ability to meet the risks involved with such products and to make every effort to make customers aware of the pertinent information regarding the products. Members must follow specific guidelines, set forth below, for qualifying the accounts to trade the products and for supervising the accounts thereafter.

(1) through (2) No Change.

(3) Hybrid Securities and Selected Equity-Linked Debt Securities

¹ The proposed changes indicated herein are based on rule text approved by the SEC on June 30, 2006, which changes become effective on the date upon which The Nasdaq Stock Market LLC operates as a national securities exchange for Nasdaq-listed securities. See Exchange Act Release No. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006) (File No. SR-NASD-2005-087).

(“SEEDS”) Listed on Nasdaq as [National] Global Market Securities

With respect to Hybrid Securities and Selected Equity-Linked Debt Securities (“SEEDS”) that have been listed as Nasdaq [National] Global Market Securities, members are obligated to comply with any Rules, regulations, or procedures applicable to such securities.

* * * * *

2800. SPECIAL PRODUCTS

* * * * *

2860. Options

(a) No Change.

(b) Requirements

(1) No Change.

(2) Definitions

The following terms shall, unless the context otherwise requires, have the stated meanings:

(A) through (NN) No Change.

(PP) through (AAA) renumbered (OO) through (ZZ).

(3) through (24) No Change.

* * * * *

4000. THE TRADE REPORTING FACILITY

4100. GENERAL

Members may use the Trade Reporting Facility to report transactions executed otherwise than on an exchange in all Nasdaq [National] Global Market and Nasdaq

Capital Market securities and convertible bonds listed on Nasdaq (“designated securities”). Members that use the Trade Reporting Facility must comply with the Rule 4000 and 6100 Series, as well as all other applicable rules.

* * * * *

4200. DEFINITIONS

(a) For purposes of the Rule 4000 Series, unless the context requires otherwise:

(1) No Change.

(2) through (5) No Change.

(6) “Nasdaq [National] Global Market” or “[NNM]” “NGM” is a distinct tier of Nasdaq comprised of securities that meet the requirements of and are authorized as a Nasdaq [National] Global Market security. The Nasdaq Global Market is the successor to the Nasdaq National Market.

(7) “Nasdaq [National] Global Market security” or “[NNM] NGM security” means any authorized security in the Nasdaq [National] Global Market.

(8) through (16) No Change.

* * * * *

4400. Trading of Certain Dually Listed Securities

The NASDAQ Stock Market LLC (the “Nasdaq Exchange”) permits issuers whose securities are listed on the New York Stock Exchange to apply also to list those securities on the Nasdaq [National] Global Market (“[NNM] NGM”). Nasdaq makes an independent determination of whether such issuers satisfy all applicable listing requirements and requires issuers to enter into a dual listing agreement with the Nasdaq Exchange.

Nasdaq does not exercise its authority under Nasdaq Exchange Rule 4390 separately to designate or register such dually listed securities as Nasdaq national market system securities within the meaning of Section 11A of the Securities Exchange Act of 1934 or the rules thereunder. As a result, these securities, which are already designated as national market system securities under the Consolidated Quotation Service (“CQS”) and Consolidated Tape Association national market system plans (“CQ and CTA Plans”), remain subject to those plans and shall not become subject to the Nasdaq UTP Plan, the national market system plan governing securities designated by the Nasdaq Stock Market. For purposes of the national market system, such securities shall continue to trade under their current one, two, or three-character ticker symbol. While such securities continue to trade through facilities of the NASD, NASD shall continue to send all quotations and transaction reports in such securities to the processor for the CTA Plan. In addition, dually listed issues that are currently eligible for trading via the Intermarket Trading System (“ITS”) shall remain so and continue to trade on the Nasdaq Intermarket trading platform as they do today.

Dually listed securities shall be treated as CQS securities under all NASD rules. Treating dually listed securities as CQS securities under NASD rules is consistent with their continuing status as CQS securities under the CTA, CQ, and ITS national market system, as described above. This interpretation also preserves the status quo and avoids creating potential confusion for investors and market participants that currently trade these securities on the ITS/CAES System.

For example, NASD shall continue to honor the trade halt authority of the primary market under the CQ and CT Plans. NASD Rule 6431 governing CQS securities shall

apply to dually listed securities. SEC Rule 10a-1 governing short sales of CQS securities shall continue to apply to dually listed securities, rather than NASD Rule 5100 governing short sales of Nasdaq listed securities. Market makers in dually listed securities shall retain all obligations imposed by the NASD Rule 5200, 6300, and 6400 Series regarding quoting, trading, and transaction reporting of CQS securities. The fees applicable to CQS securities set forth in NASD Rule 7010 shall continue to apply to dually listed issues.

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4630. Reporting Transactions in Designated Securities

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4633. Trading Halts

(a) Authority to Initiate Halts In Trading of Designated Securities [on] Reported to the Trade Reporting Facility

NASD, pursuant to the procedures set forth in paragraph (b):

(1) shall halt trading otherwise than on an exchange reported to [in] the Trade Reporting Facility in a designated security whenever any market that has the authority to call a regulatory halt in the security imposes a trading halt, or suspends the listing, to:

- (A) permit dissemination of material news;
- (B) obtain information from the issuer relating to material news;
- (C) obtain information relating to the issuer's ability to meet listing qualification requirements; or
- (D) obtain any other information that is necessary to protect investors and the public interest.

(2) shall halt trading otherwise than on an exchange reported to [in] the

Trade Reporting Facility in a designated security when:

(A) through (B) No Change.

(C) (i) NASD [believes] determines that such extraordinary market activity is caused by the misuse or malfunction of an electronic quotation, communication, reporting, or execution system operated by, or linked to, NASD; or

(ii) After consultation with a national securities exchange trading the security, NASD [believes] determines that such extraordinary market activity is caused by the misuse or malfunction of an electronic quotation, communication, reporting, or execution system operated by, or linked to, such other national securities exchange.

(3) No Change.

(b) No Change.

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4900. BRUT SYSTEM (System)

4901. Definitions

Unless stated otherwise, the terms described below shall have the following meaning:

(a) through (h) No Change.

(i) The term “Participant” shall mean an NASD member that fulfills the obligations contained in Rule 4902 regarding participation in the System. The term “Participant” shall also include non-NASD broker/dealers that desire to use the System

for ITS Securities and otherwise meet all other requirements for System participation. Non-NASD member broker/dealers shall have access to System until the earlier of either [July] September 1, 2006, or the date that Nasdaq becomes operational as a national securities exchange for the particular class of securities traded by the non-NASD member.

(j) through (q) No Change.

(r) The term “Pegged” shall mean, for priced limit orders so designated, that after entry into the System, the price of the order is automatically adjusted by the System in response to changes in the [the] national best bid or offer, as appropriate. The Participant entering a Pegged Order can specify that order’s price will either equal the inside quote or improve the inside quote by an amount set by the entering party on the same side of the market (a “Regular Pegged Order”) or offset the inside quote on the contra side of the market by an amount (the “Offset Amount”) set by the Participant (e.g., \$0.01 less than the inside offer or \$0.02 more than the inside bid) (a “Reverse Pegged Order”). The Participant entering a Pegged Order may (but is not required to) specify a limit price, to define a price at which pegging of the order will stop and the order will be permanently converted into an un-pegged limit order at limit price. Offset amounts for Pegged Orders are priced in \$0.01 increments. However, if at any time an offset amount specified by a Participant does not result in an offer or a bid that is fully compliant with the minimum price variation provisions of Rule 4904, then, for an offer, the applicable offset amount will be the smallest amount that results in a compliant order and is greater than the specified offset amount, and, for a bid, the applicable offset amount will be the largest amount that results in a compliant order and is smaller, than the specified offset amount.

(s) through (w) No Change.

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4000A. NASD ALTERNATIVE DISPLAY FACILITY

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4200A. DEFINITIONS

(a) Unless the context requires otherwise, the terms used in the Rule 4000A and Rule 6000A Series shall have the meanings below. Terms not specifically defined below shall have the meaning in NASD's By-Laws and Rules and SEC Rule 11Aa3-1.

(1) No Change.

(2) "ADF-eligible security" means a Nasdaq [National] Global Market security, Nasdaq Capital Market security and Nasdaq Convertible Debt securities.

(3) through (4) No Change.

(5) "Nasdaq [National] Global Market" or "[NNM] NGM" is a distinct tier of Nasdaq comprised of securities that meet the requirements of and are authorized as a Nasdaq [National] Global Market Security.

(6) through (16) No Change.

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5000. TRADING OTHERWISE THAN ON AN EXCHANGE

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5100. Short Sale Rule

(a) With respect to trades reported to the ADF or the Trade Reporting Facility, no member shall effect a short sale in a Nasdaq [National] 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 the purposes of this rule, the term “customer” includes a non-member broker-dealer.

(b) through (g) No Change.

(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 [National] Global Market security or an options class on a qualified stock index; and

(B) No Change.

(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 [National] 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.

* No Change to Footnote Text.

(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 [National] 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. through c. No Change.

(iii) No Change.

(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 [National] Global Market securities and/or index options on qualified stock indexes pursuant to the rules of a qualified options exchange.

(C) No Change.

(D) A “qualified stock index” shall mean any stock index that includes one or more Nasdaq [National] Global Market securities, provided that more than 10% of the weight of the index is accounted for by Nasdaq [National] 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 [National] Global Market securities is less than 8% at the end of any subsequent calendar quarter.

(E) through (F) No Change.

(i) through (j) No Change.

(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, 2006.

IM-5100. Short Sale Rule

(a) (1) In developing a Short Sale Rule for Nasdaq [National] 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 [National] 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) through (3) No Change.

(b) With respect to trades reported to the ADF or the Trade Reporting Facility, Rule 5100 requires that no member shall effect a short sale in a Nasdaq [National] 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) No Change.

5110. Transactions Related to Initial Public Offerings

No member or person associated with a member shall execute or cause to be executed, directly or indirectly, a transaction otherwise than on an exchange in a security subject to an initial public offering until such security has first opened for trading on the national securities exchange listing the security, as indicated by the dissemination of an opening transaction in the security by the listing exchange [via the Consolidated Tape].

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6000. NASD SYSTEMS AND PROGRAMS

6100. CLEARING AND COMPARISON RULES

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IM-6130. Trade Reporting of Short Sales

NASD's short sale rule (Short Sale Rule or Rule 5100) generally prohibits members from effecting short sales in [NNM] 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 [NNM] NGM securities transactions, but for other securities transactions, 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 [NNM] NGM or exchange-listed security that qualifies for an exemption from Rule 5100 or SEC Rule 10a-1).

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6400. Reporting Transactions in Listed Securities

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6430. Suspension of Trading

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6431. Trading Halts

(a) Authority to Initiate Halts In Trading of Eligible Securities

NASD, pursuant to the procedures set forth in paragraph (b):

(1) No Change.

(2) shall halt trading otherwise than on an exchange in an eligible security

when:

(A) through (B) No Change.

(C) (i) NASD [believes] determines that such extraordinary market activity is caused by the misuse or malfunction of an electronic quotation, communication, reporting, or execution system operated by, or linked to, NASD; or

(ii) After consultation with a national securities exchange trading the security, NASD [believes] determines that such extraordinary market activity is caused by the misuse or malfunction of an electronic quotation, communication, reporting, or execution system operated by, or linked to, such other national securities exchange.

(3) No Change.

(b) No Change.

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6600. OVER-THE-COUNTER EQUITY SECURITIES

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6640. Submission of Rule 15c2-11 Information on Non-Exchange-Listed Securities

(a) Except as provided in SEC Rule 15c2-11(f)(1), (2), (3) and (5) and 15c2-11(h) under the Act, no member shall initiate or resume the quotation of a non-exchange-listed security in any quotation medium unless the member has demonstrated compliance with this Rule and the applicable requirements for information maintenance under Rule 15c2-11. A member shall demonstrate compliance by making a filing with, and in the form required by, the [Association] NASD, which filing must be received at least three business days before the member's quotation is published or displayed in the quotation medium.

(b) The information to be filed shall contain one copy of all information required to be maintained under SEC Rule 15c2-11(a)(1), (2), (3)(iii), (4)(ii), or (5), including any information that may be required by future amendments thereto. Members are not required to file with NASD copies of any information that is available through the SEC's Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system; provided, however, that the filing with NASD shall contain identifying information for each issuer report or statement available through EDGAR that was relied upon in satisfying the member's obligations under this Rule and SEC Rule 15c2-11(a), including the type of report, report date and any other information as may be requested by NASD. In addition, this filing shall identify the issuer, the issuer's predecessor in the event of a merger or reorganization within the previous 12 months, the type of non-exchange-listed security to be quoted (e.g., ADR, warrant, unit, or common stock), the quotation medium to be used,

the member's initial or resumed quotation, and the particular subsection of Rule 15c2-11 with which the member is demonstrating compliance. Additionally, if a member is initiating or resuming quotation of a non-exchange-listed security with a priced entry, the member's filing must specify the basis upon which that priced entry was determined and the factors considered in making that determination.

(c) If a member's initial or resumed quotation does not include a priced entry, a member shall supplement its prior filing under this Rule, in the form required by the [Association] NASD, before inserting a priced entry for the affected non-exchange-listed security in a quotation medium. The supplemental filing shall specify the basis upon which the proposed priced entry was determined and the factors considered in making that determination. The supplemental filing must be received by the [Association] NASD at least three business days before the member's priced entry first appears in a quotation medium.

(d) All filings made with [Association] NASD under this Rule must be reviewed and signed by a principal of the member firm.

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6950. ORDER AUDIT TRAIL SYSTEM

6951. Definitions

For purposes of the Rule 6950 Series:

(a) through (l) No Change.

(m) "Reporting Member" shall mean a member that receives or originates an order and has an obligation to record and report information under Rules 6954 and 6955.

A member shall not be considered a Reporting Member in connection with an order, if the following conditions are met:

(1) the member engages in a non-discretionary order routing process, pursuant to which it immediately routes, by electronic or other means, all of its orders to a single receiving Reporting Member;

(2) the member does not direct and does not maintain control over subsequent routing or execution by the receiving Reporting Member;

(3) the receiving Reporting Member records and reports all information required under Rules 6954 and 6955 with respect to the order; and

(4) the member has a written agreement with the receiving Reporting Member specifying the respective functions and responsibilities of each party to effect full compliance with the requirements of Rules 6954 and 6955.

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6954. Recording of Order Information

(a) No Change.

(b) Order Origination and Receipt

Unless otherwise indicated, the following order information must be recorded under this Rule when an order is received or originated. For purposes of this Rule, the order origination or receipt time is the time the order is received from the customer.

(1) through (18) No Change.

(c) Order Transmittal

Order information required to be recorded under this Rule when an order is transmitted includes the following.

(1) When a Reporting Member transmits an order to a[nother] department within the member, [other than to the trading department,] the Reporting Member shall record:

(A) through (C) No Change.

(D) an identification of the department and nature of the department to which the order was transmitted, [and]

(E) the date and time the order was received by that department,

(F) the number of shares to which the transmission applies, and

(G) any special handling requests.[:]

(2) through (6) No Change.

(d) No Change.

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6000A. NASD ADF SYSTEMS AND PROGRAMS

6100A. TRACS TRADE COMPARISON SERVICE

6110A. Definitions

(a) through (k) No Change.

(l) The term “TRACS Eligible Security” shall mean a Nasdaq [National] Global Market security, Nasdaq Capital Market security, and Nasdaq Convertible Debt security.

(m) through (n) No Change.

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9600. PROCEDURES FOR EXEMPTIONS

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.

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