

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

Initial <input checked="" type="checkbox"/>	Amendment <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) <input type="checkbox"/>	Section 19(b)(3)(A) <input checked="" type="checkbox"/>	Section 19(b)(3)(B) <input type="checkbox"/>
Pilot <input type="checkbox"/>			Rule		
Extension of Time Period for Commission Action <input type="checkbox"/>		Date Expires <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input checked="" type="checkbox"/> 19b-4(f)(6)	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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Description
Provide a brief description of the proposed rule change (limit 250 characters).

Proposed rule change to amend NASD Rule 5100 (Short Sale Rule) to allow members to use, for a transitional period, the Nasdaq Exchange best (inside) bid rather than the national best (inside) bid for purposes of application of the rule

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 Vice President and Associate General Counsel
 (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 EFFS 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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Exhibit Sent As Paper Document

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

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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

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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)(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 amend NASD Rule 5100 to allow members to use, for a transitional period only, the Nasdaq Exchange best (inside) bid rather than the national best (inside) bid for purposes of application of the rule. Pursuant to SR-NASD-2005-087, Rule 5100 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.² Currently, that date is projected to be August 1, 2006.

Below is the text of the proposed rule change. Proposed new language is underlined.

* * * * *

5000. TRADING OTHERWISE THAN ON AN EXCHANGE

* * * * *

5100. Short Sale Rule

(a) With respect to trades reported to the ADF or the Trade Reporting Facility, no

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).

member shall effect a short sale in a Nasdaq Global Market Security (as that term is defined in Rule 4200) otherwise than on an exchange for the account of a customer or for its own account at or below the current national best (inside) bid when the current national best (inside) bid is below the preceding national best (inside) bid in the security. In addition, for a transitional period ending on November 3, 2006, members may use the Nasdaq Exchange best (inside) bid rather than the national best (inside) bid for purposes of the application of this rule, provided that the member has submitted prior written notification to NASD of this selection. Members are required to use the same bid tick test on a firm-wide basis. A member using the Nasdaq Exchange best (inside) bid may not use the national best (inside) bid prior to the end of the transitional period unless the member submits prior written notification to NASD of this change. For the purposes of this rule, the term “customer” includes a non-member broker-dealer.

(b) through (l) No Change.

* * * * *

(b) Not applicable.

(c) Not applicable.

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

Background

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.

NASD is filing this proposed rule change in anticipation of SR-NASD-2005-087 becoming effective to amend Rule 5100 to allow members to use, for a transitional period only, the Nasdaq Exchange best (inside) bid rather than the national best (inside) bid for purposes of application of the rule.

³ Id.

Proposed Amendment to Rule 5100

Pursuant to SR-NASD-2005-087, NASD proposed to renumber Rule 3350 (Short Sale Rule) as Rule 5100 under the Rule 5000 Series (Trading Otherwise Than On An Exchange). Rule 5100 provides that, with respect to trades reported to NASD's Alternative Display Facility or the Trade Reporting Facility, no member shall effect a short sale in a Nasdaq Global Market Security otherwise than on an exchange at or below the current national best (inside) bid when the current national best (inside) bid is below the preceding national best (inside) bid.

Pursuant to current Rule 3350(a)(2), with respect to trades in Nasdaq Global Market securities reported to Nasdaq, the application of the rule is based on the best (inside) bid displayed in the Nasdaq Market Center. Thus, some members are currently using the Nasdaq best bid for purposes of the application of this rule and may need additional time to revise their systems to use the national best bid for purposes of over-the-counter trading reported to the Trade Reporting Facility. Accordingly, NASD is proposing to amend Rule 5100 to provide that, for a transitional period ending on November 3, 2006,⁴ members may use the Nasdaq Exchange best (inside) bid rather than the national best (inside) bid for purposes of application of the rule. Members must submit prior written notice to NASD of this selection and will be required to use the same

⁴ NASD contemplates that when the transitional period expires on November 3, 2006, this amendment will be automatically deleted from the NASD Manual without submission of another proposed rule change.

bid tick test on a firm-wide basis. The proposed rule change would also expressly provide that a member using the Nasdaq Exchange best (inside) bid may not use the national best (inside) bid prior to the end of the transitional period on November 3, 2006 unless the member submits prior written notice to NASD of this change.

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.

(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 will protect investors because it will afford members sufficient time to make necessary systems adjustments to ensure compliance with the Short Sale Rule.

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.

⁵ 15 U.S.C. 78o-3(b)(6).

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,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).

NASD requests that the Commission waive the 5-day pre-filing requirement and the 30-day period for the proposed rule change to become operative, as set forth in Rule 19b-4(f)(6).⁷ NASD believes that the waiver of the 5-day pre-filing requirement is necessary so that members will have certainty with respect to this change and can be formally notified immediately. NASD believes that the waiver of the 30-day operative requirement is necessary so that the proposed rule change can become effective on the same date that SR-NASD-2005-087 becomes effective. As noted above, it is currently

⁶ 17 CFR 240.19b-4(f)(6).

⁷ 17 CFR 240.19b-4(f)(6).

anticipated that the effective date will be August 1, 2006.

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-2006-089)

Self-Regulatory Organizations: National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to NASD Rule 5100 (Short Sale Rule)

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 amend NASD Rule 5100 to allow members to use, for a

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4.

transitional period only, the Nasdaq Exchange best (inside) bid rather than the national best (inside) bid for purposes of application of the rule. Pursuant to SR-NASD-2005-087, Rule 5100 will become effective on the date upon which the Nasdaq Exchange operates as a national securities exchange for Nasdaq-listed securities.⁴ Currently, that date is projected to be August 1, 2006.

Below is the text of the proposed rule change. Proposed new language is underlined.

* * * * *

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 Global Market Security (as that term is defined in Rule 4200) otherwise than on an exchange for the account of a customer or for its own account at or below the current national best (inside) bid when the current national best (inside) bid is below the preceding national best (inside) bid in the security. In addition, for a transitional period ending on November 3, 2006, members may use the Nasdaq Exchange best (inside) bid rather than the national best (inside) bid for purposes of the application of this rule, provided that the member has submitted prior written notification to NASD of this selection. Members are required to use the same bid tick

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).

test on a firm-wide basis. A member using the Nasdaq Exchange best (inside) bid may not use the national best (inside) bid prior to the end of the transitional period unless the member submits prior written notification to NASD of this change. For the purposes of this rule, the term “customer” includes a non-member broker-dealer.

(b) through (l) No Change.

* * * * *

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

Background

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 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.

⁵ Id.

NASD is filing this proposed rule change in anticipation of SR-NASD-2005-087 becoming effective to amend Rule 5100 to allow members to use, for a transitional period only, the Nasdaq Exchange best (inside) bid rather than the national best (inside) bid for purposes of application of the rule.

Proposed Amendment to Rule 5100

Pursuant to SR-NASD-2005-087, NASD proposed to renumber Rule 3350 (Short Sale Rule) as Rule 5100 under the Rule 5000 Series (Trading Otherwise Than On An Exchange). Rule 5100 provides that, with respect to trades reported to NASD's Alternative Display Facility or the Trade Reporting Facility, no member shall effect a short sale in a Nasdaq Global Market Security otherwise than on an exchange at or below the current national best (inside) bid when the current national best (inside) bid is below the preceding national best (inside) bid.

Pursuant to current Rule 3350(a)(2), with respect to trades in Nasdaq Global Market securities reported to Nasdaq, the application of the rule is based on the best (inside) bid displayed in the Nasdaq Market Center. Thus, some members are currently using the Nasdaq best bid for purposes of the application of this rule and may need additional time to revise their systems to use the national best bid for purposes of over-the-counter trading reported to the Trade Reporting Facility. Accordingly, NASD is proposing to amend Rule 5100 to provide that, for a transitional period ending on November 3, 2006,⁶ members may use the Nasdaq Exchange best (inside) bid rather than the national best (inside) bid for purposes of application of the rule. Members must

⁶ NASD contemplates that when the transitional period expires on November 3, 2006, this amendment will be automatically deleted from the NASD Manual without submission of another proposed rule change.

submit prior written notice to NASD of this selection and will be required to use the same bid tick test on a firm-wide basis. The proposed rule change would also expressly provide that a member using the Nasdaq Exchange best (inside) bid may not use the national best (inside) bid prior to the end of the transitional period on November 3, 2006 unless the member submits prior written notice to NASD of this change.

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 equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change will protect investors because it will afford members sufficient time to make necessary systems adjustments to ensure compliance with the Short Sale Rule.

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.

⁷ 15 U.S.C. 78o-3(b)(6).

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

NASD has requested that the Commission waive the 5-day pre-filing requirement and the 30-day period for the proposed rule change to become operative, as set forth in Rule 19b-4(f)(6).⁹ NASD believes that the waiver of the 5-day pre-filing requirement is necessary so that members will have certainty with respect to this change and can be formally notified immediately. NASD believes that the waiver of the 30-day operative requirement is necessary so that the proposed rule change can become effective on the same date that SR-NASD-2005-087 becomes effective. As noted above, it is currently anticipated that the effective date will be August 1, 2006.

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

⁸ 17 CFR 240.19b-4(f)(6).

⁹ 17 CFR 240.19b-4(f)(6).

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-2006-089 on the subject line.

Paper Comments:

- 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-2006-089. 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-2006-089 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).