

OMB APPROVAL

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Page 1 of 18

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

File No. SR - 2006 - 076
Amendment No. 2

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

Pilot ☐ Extension of Time Period
for Commission Action ☐ Date Expires

☐ 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
☐

Exhibit 3 Sent As Paper Document
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Description

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

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)

Vice President and Associate 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.

Stephanie Dumont,

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

Add

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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

Add

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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

Add

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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

Add

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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”) Amendment No. 2 to SR-NASD-2006-076 to exempt all securities included in the Nasdaq-100 Index from the price test set forth in NASD Rule 5100.

Below is the text of the proposed rule change. Proposed new language is underlined.²

* * * * *

5100. Short Sale Rule

(a) – (b) No Change.

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

(1) – (9) No Change.

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

(d) – (l) No Change.

* * * * *

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

¹ 15 U.S.C. 78s(b)(1).

² NASD has filed another proposed rule change, SR-NASD-2005-129, which proposes changes to Rule 5100.

The proposed rule change was approved by the Board of Directors of The Nasdaq Stock Market, Inc. (“Nasdaq”) at its meeting on July 25, 2004, which authorized the filing of the rule change with the Commission. Counsel for NASD Regulation, Inc. has been provided an opportunity to consult with respect to the proposed rule change, pursuant to the Plan of Allocation and Delegation of Functions by NASD to its Subsidiaries. The Board of Governors of the NASD had an opportunity to review the proposed rule change at its meeting on August 6, 2004. No other action by the NASD is necessary for the filing of the 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.

The effective date of the proposed rule change will be announced in a Notice to Members.

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

(a) Purpose

Rule Filing History

On June 15, 2006, NASD, through its subsidiary Nasdaq, filed with the Commission proposed rule change SR-NASD-2006-076 (the “original proposal”), which proposed to exempt all securities included in the Nasdaq-100 Index from the price test set forth in NASD Rule 3350(a).

On June 30, 2006, the Commission approved SR-NASD-2005-087, which amended certain NASD rules to reflect the separation of Nasdaq from NASD upon the

operation of the Nasdaq Exchange as a national securities exchange.³ Among other amendments, SR-NASD-2005-087 amended Rule 3350 to renumber it as Rule 5100 and apply it uniformly to short sales of over-the-counter (OTC) transactions reported to the Alternative Display Facility (ADF) or the Trade Reporting Facility (TRF). SR-NASD-2005-087 became effective on August 1, 2006, the date upon which Nasdaq began operation as an exchange for Nasdaq-listed securities.

Given the Commission's approval of SR-NASD-2005-087, NASD assumed direct responsibility for all rulemaking functions related to Rule 5100 (formerly Rule 3350). As such, NASD filed Amendment No. 1 to SR-NASD-2006-076 ("Amendment No. 1"), which amended the proposed rule change to reflect the renumbering of Rule 3350 as Rule 5100 in the proposed rule text, among other technical and clarifying changes.

NASD is filing this Amendment No. 2 to SR-NASD-2006-076 ("Amendment No. 2"), to amend the Purpose section of the rule filing to revise the basis upon which NASD is filing the proposed rule change herein.

Purpose

Rule 5100 provides that, with respect to trades reported to the ADF or the TRF, no member shall effect a short sale in a NGM 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.⁴ The price test contained in Rule 5100

³ See Securities Exchange Act Release No. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006).

⁴ NASD recently amended Rule 5100 to allow members to use, for a transitional period ending on November 3, 2006, the Nasdaq Exchange best (inside) bid rather

is designed to prevent the market price of NGM securities from being manipulated downward by unrestricted short selling. All short sales in NGM securities effected otherwise than on an exchange must comply with Rule 5100 or qualify for an exception to or exemption from the rule.

On August 21, 2006, The NASDAQ Stock Market LLC (“Nasdaq Exchange”) filed proposed rule change SR-NASDAQ-2006-031 to exempt all securities included in the Nasdaq-100 Index from Nasdaq Exchange Rule 3350, which governs short sales in NGM securities executed on or reported to the Nasdaq Exchange.⁵ NASD is filing the proposed rule change to create a similar exemption from Rule 5100 for securities included in the Nasdaq-100 Index. NASD believes that, with respect to securities included in the Nasdaq-100 Index, short sales in NGM securities executed otherwise than on an exchange should be subject to the same exemption as short sales in NGM securities executed on or reported to the Nasdaq Exchange. Accordingly, NASD is filing the proposed rule change to amend Rule 5100 to create an exemption for all securities included in the Nasdaq-100 Index, consistent with the approved exemption in SR-NASDAQ-2006-031 for short sales in NGM securities executed on or reported to the Nasdaq Exchange.

than the national best (inside) bid for the purposes of the application of the rule. See Exchange Act Release No. 54203 (July 25, 2006), 71 FR 43256 (July 31, 2006) (SR-NASD-2006-089).

⁵ The SEC approved SR-NASDAQ-2006-031 on September 13, 2006. See Securities Exchange Act Release No. 54435 (September 13, 2006), 71 FR 55042 (September 20, 2006).

The effective date of the proposed rule change will be announced in a Notice to Members.

(b) Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁶ 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 the proposed rule change will provide a uniform exemption for NGM securities included in the Nasdaq-100 Index, consistent with the changes in SR-NASDAQ-2006-031.

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

Written comments on the original proposal were solicited by the Commission.⁷ As noted in Item 3 of this filing, the original proposal was a substantially similar rule filing that proposed to exempt all securities in the Nasdaq-100 Index from the price test in former NASD Rule 3350. The original proposal was filed by Nasdaq when it was a subsidiary of NASD and prior to Nasdaq commencing operations as a national securities

⁶ 15 U.S.C. 78o-3(b)(6).

⁷ See Exchange Act Release No. 54010 (June 16, 2006), 71 FR 35964 (June 22, 2006).

exchange.⁸ The Commission did not receive any comment letters in response to the Federal Register publication of the original proposal.

6. Extension of Time Period for Commission Action

NASD does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.⁹

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

NASD requests the Commission to find good cause pursuant to Section 19(b)(2) of the Act¹⁰ for approving the proposed rule change prior to the 30th day after its publication in the Federal Register.

Because the original proposal, which was a substantially similar rule filing, has already been subject to a notice and comment period, NASD requests the Commission to accelerate the effectiveness of the proposed rule change prior to the 30th day after its publication in the Federal Register.

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

NASD based the proposed rule change on SR-NASDAQ-2006-031.

9. Exhibits

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

⁸ See supra note 3.

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ 15 U.S.C. 78s(b)(2).

Exhibit 4. Exhibit 4 shows the full text of rule change marking changes from Amendment No. 1 to this Amendment No. 2, with the language of Amendment No. 1 shown as if adopted.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-NASD-2006-076)

Self-Regulatory Organizations: National Association of Securities Dealers, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Exempt All Securities Included in the Nasdaq-100 Index from the Price Test Set Forth in NASD Rule 5100

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 SEC Amendment No. 2 to the proposed rule change³ as described in Items I, II, and III below, which Items have been prepared by NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to exempt all securities included in the Nasdaq-100 Index from the price test set forth in NASD Rule 5100.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ On June 15, 2006, NASD filed SR-NASD-2006-076 with the Commission. On September 18, 2006, NASD filed with the Commission Amendment No. 1 to SR-NASD-2006-076.

underlined.

* * * * *

5100. Short Sale Rule

(a) – (b) No Change.

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

(1) – (9) No Change.

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

(d) – (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

Rule Filing History

On June 15, 2006, NASD, through its subsidiary, The Nasdaq Stock Market, Inc. (“Nasdaq”), filed with the Commission proposed rule change SR-NASD-2006-076 (the

“original proposal”), which proposed to exempt all securities included in the Nasdaq-100 Index from the price test set forth in NASD Rule 3350(a).

On June 30, 2006, the Commission approved SR-NASD-2005-087, which amended certain NASD rules to reflect the separation of Nasdaq from NASD upon the operation of the Nasdaq Exchange as a national securities exchange.⁴ Among other amendments, SR-NASD-2005-087 amended Rule 3350 to renumber it as Rule 5100 and apply it uniformly to short sales of over-the-counter (OTC) transactions reported to the Alternative Display Facility (ADF) or the Trade Reporting Facility (TRF). SR-NASD-2005-087 became effective on August 1, 2006, the date upon which Nasdaq began operation as an exchange for Nasdaq-listed securities.

Given the Commission’s approval of SR-NASD-2005-087, NASD assumed direct responsibility for all rulemaking functions related to Rule 5100 (formerly Rule 3350). As such, NASD filed Amendment No. 1 to SR-NASD-2006-076 (“Amendment No. 1”), which amended the proposed rule change to reflect the renumbering of Rule 3350 as Rule 5100 in the proposed rule text, among other technical and clarifying changes.

NASD is filing this Amendment No. 2 to SR-NASD-2006-076 (“Amendment No. 2”), to amend the Purpose section of the rule filing to revise the basis upon which NASD is filing the proposed rule change herein.

Purpose

Rule 5100 provides that, with respect to trades reported to the ADF or the TRF, no member shall effect a short sale in a NGM security otherwise than on an exchange at

⁴ See Securities Exchange Act Release No. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006).

or below the current national best (inside) bid when the current national best (inside) bid is below the preceding national best (inside) bid.⁵ The price test contained in Rule 5100 is designed to prevent the market price of NGM securities from being manipulated downward by unrestricted short selling. All short sales in NGM securities effected otherwise than on an exchange must comply with Rule 5100 or qualify for an exception to or exemption from the rule.

On August 21, 2006, The NASDAQ Stock Market LLC (“Nasdaq Exchange”) filed proposed rule change SR-NASDAQ-2006-031 to exempt all securities included in the Nasdaq-100 Index from Nasdaq Exchange Rule 3350, which governs short sales in NGM securities executed on or reported to the Nasdaq Exchange.⁶ NASD is filing the proposed rule change to create a similar exemption from Rule 5100 for securities included in the Nasdaq-100 Index. NASD believes that, with respect to securities included in the Nasdaq-100 Index, short sales in NGM securities executed otherwise than on an exchange should be subject to the same exemption as short sales in NGM securities executed on or reported to the Nasdaq Exchange. Accordingly, NASD is filing the proposed rule change to amend Rule 5100 to create an exemption for all securities included in the Nasdaq-100 Index, consistent with the approved exemption in SR-

⁵ NASD recently amended Rule 5100 to allow members to use, for a transitional period ending on November 3, 2006, the Nasdaq Exchange best (inside) bid rather than the national best (inside) bid for the purposes of the application of the rule. See Exchange Act Release No. 54203 (July 25, 2006), 71 FR 43256 (July 31, 2006) (SR-NASD-2006-089).

⁶ The SEC approved SR-NASDAQ-2006-031 on September 13, 2006. See Securities Exchange Act Release No. 54435 (September 13, 2006), 71 FR 55042 (September 20, 2006).

NASDAQ-2006-031 for short sales in NGM securities executed on or reported to the Nasdaq Exchange.

The effective date of the proposed rule change will be announced in a Notice to Members.

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 must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change will provide a uniform exemption for NGM securities included in the Nasdaq-100 Index, consistent with the changes in SR-NASDAQ-2006-031.

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.

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

Written comments on the original proposal were solicited by the Commission.⁸ As noted above, the original proposal was a substantially similar rule filing that proposed to exempt all securities in the Nasdaq-100 Index from the price test in former NASD

⁷ 15 U.S.C. 78o-3(b)(6).

⁸ See Exchange Act Release No. 54010 (June 16, 2006), 71 FR 35964 (June 22, 2006).

Rule 3350. The original proposal was filed by Nasdaq when it was a subsidiary of NASD and prior to Nasdaq commencing operations as a national securities exchange.⁹ The Commission did not receive any comment letters in response to the Federal Register publication of the original proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

NASD has requested that the Commission find good cause pursuant to Section 19(b)(2) of the Act¹⁰ for approving the proposed rule change prior to the 30th day after publication in the Federal Register. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to NASD and, in particular, the requirements of Section 15A of the Act and the rules and regulations thereunder. Because the original proposal, which was a substantially similar rule filing, has already been subject to a notice and comment period, the Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in that accelerated approval

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

⁹ See supra note 4.

¹⁰ 15 U.S.C. 78s(b)(2).

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. 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-2006-076 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-2006-076. 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-2006-076 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.¹¹

Nancy M. Morris

Secretary

¹¹ 17 CFR 200.30-3(a)(12).

EXHIBIT 4

Exhibit 4 shows the full text of rule change marking changes from Amendment No. 1 to this Amendment No. 2, with the language of Amendment No. 1 shown as if adopted.

Proposed new language is underlined.

Language included in the current version of NASD Rules and inadvertently omitted in Amendment No. 1 appears in broken underscore.

* * * *

5100. Short Sale Rule

(a) – (b) No Change.

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

(1) – (9) No Change.

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

(d) – (1) No Change.