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

File No. SR - 2005 - 146
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

☐ 19b-4(f)(1) ☐ 19b-4(f)(4)
☐ 19b-4(f)(2) ☐ 19b-4(f)(5)
☐ 19b-4(f)(3) ☐ 19b-4(f)(6)

Pilot ☐

Extension of Time Period for Commission Action ☐

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).

Contact Information

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

First Name: Andrea Last Name: Orr
Title: Assistant General Counsel
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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: 10/19/2006

By: Stephanie Dumont
(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 EFFS website.

Form 19b-4 Information Add Remove View	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 ☐	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") Amendment No. 2 to SR-NASD-2005-146 to expand the scope of Interpretive Material (IM) 2110-2 relating to trading ahead of customer limit orders to apply to all over-the-counter ("OTC") equity securities.

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

* * * * *

IM-2110-2. Trading Ahead of Customer Limit Order

(a) General Application

To continue to ensure investor protection and enhance market quality, NASD's Board of Governors is issuing an interpretation to NASD Rules dealing with member firms' treatment of their customer limit orders in <u>NMS stocks and OTC equity</u>[exchange-listed] securities. This interpretation, which is applicable from 9:30 a.m. to 6:30 p.m. Eastern Time, will require members to handle their customer limit orders with all due care so that members do not "trade ahead" of those limit orders. Thus, members that handle customer limit orders, whether received from their own customers or from another member, are prohibited from trading at prices equal or superior to that of the limit order without executing the limit order. In the interests of investor protection, NASD is

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1 15 U.S.C. 78s(b)(1).

eliminating the so-called disclosure “safe harbor” previously established for members that fully disclosed to their customers the practice of trading ahead of a customer limit order by a market-making firm.[1] For purposes of this interpretation, (1) “NMS stock” shall have the meaning set forth in SEC Rule 600(b)(47) of Regulation NMS and (2) “OTC equity security” shall have the meaning set forth in Rule 6610(d).

Rule 2110 states that:

A member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade.

Rule 2320, the Best Execution Rule, states that:

In any transaction for or with a customer, a member and persons associated with a member shall use reasonable diligence to ascertain the best inter-dealer market for the subject security and buy or sell in such a market so that the resultant price to the customer is as favorable as possible to the customer under prevailing market conditions.

Interpretation

The following interpretation of Rule 2110 has been approved by the Board:

A member firm that accepts and holds an unexecuted limit order from its customer (whether its own customer or a customer of another member) in an NMS stock or OTC equity[exchange-listed] security and that continues to trade the subject security for its own account at prices that would satisfy the customer’s limit order, without executing that limit order, shall be deemed to have acted in a manner inconsistent with just and equitable principles of trade, in violation of Rule 2110, provided that a member firm may negotiate specific terms and conditions applicable to the acceptance of limit orders only with respect to limit orders that are: (a) for customer accounts that meet the definition of an "institutional account" as that term is defined in Rule 3110(c)(4); or (b) 10,000 shares or more, unless such orders are less than $100,000 in value. In the event that a member trades ahead of an unexecuted customer limit order at a price that is better than the unexecuted limit order, such member is required to execute the limit order at the price received by the member or better. Nothing in this interpretation, however, requires members to accept limit orders from any customer.

By rescinding the safe harbor position and adopting this interpretation, NASD wishes to emphasize that members may not trade ahead of their customer limit orders even if the member had in the past fully disclosed the practice to its customers prior to accepting limit orders. NASD believes that, pursuant to Rule 2110, members accepting and holding unexecuted customer limit orders owe certain duties to their customers and the customers of other member firms that may not be overcome or cured with disclosure of trading practices that include trading ahead of the customer's order. The terms and conditions under which institutional account or appropriately sized customer limit orders are accepted must be made clear to customers at the time the order is accepted by the firm so that trading ahead in the firm's market-making capacity does not occur.

[As outlined in NASD Notice to Members 97-57, the minimum amount of price improvement necessary in order for a member to execute an incoming order on a proprietary basis when holding an unexecuted limit order for a Nasdaq security trading in fractions, and not be required to execute the held limit order, is as follows:]

- [If actual spread is greater than 1/16 of a point, a firm must price improve an incoming order by at least a 1/16. For stocks priced under $10 (which are quoted in 1/32 increments), the firm must price improve by at least 1/64.]

- [If actual spread is the minimum quotation increment, a firm must price improve an incoming order by one-half the minimum quotation increment.]

[For Nasdaq securities authorized for trading in decimals pursuant to the Decimals Implementation Plan For the Equities and Options Markets, t]The minimum amount of price improvement necessary in order for a member to execute an incoming order on a proprietary basis [in a security trading in decimals] when holding an unexecuted limit order in that same security, and not be required to execute the held limit order, is as follows:

1) For customer limit orders priced greater than or equal to $1.00 that are at or inside the best inside market [displayed in Nasdaq], the minimum amount of price improvement required is $0.01; [and]

2) For customer limit orders priced less than $1.00 that are at or inside the best inside market, the minimum amount of price improvement required is the lesser of $0.01 or one-half (1/2) of the current inside spread;

3) For customer limit orders priced outside the best inside market [displayed in Nasdaq], the member must price improve the incoming order by executing the incoming order at a price at or inside the best inside market for the security; and[at least equal to the next superior minimum quotation increment in Nasdaq (currently $0.01)]

4) For customer limit orders in securities for which there is no published inside market, the minimum amount of price improvement required is $0.01.

NASD also wishes to emphasize that all members accepting customer limit orders owe those customers duties of “best execution” regardless of whether the orders are executed through the member or sent to another member for execution. As set out above, the Best Execution Rule requires members to use reasonable diligence to ascertain the best inter-dealer market for the security and buy or sell in such a market so that the price to the customer is as favorable as possible under prevailing market conditions. NASD emphasizes that order entry firms should continue to monitor routinely the handling of their customers' limit orders regarding the quality of the execution received.

(b) through (c) No change.

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[1] For purposes of the operation of certain [Nasdaq] transaction and quotation reporting systems and facilities during the period from 4 p.m. to 6:30 p.m. Eastern Time, members may generally limit the life of a customer limit order to the period of 9:30 a.m. to 4 p.m. Eastern Time. If a customer does not formally assent ("opt-in") to processing of the customer's limit order(s) during the extended hours period commencing after the normal close of the [Nasdaq] market, limit order protection will not apply to that customer's order(s).

* * * * *

6541. [Limit Order Protection]<u>Reserved.</u>

[(a) Members shall be prohibited from "trading ahead" of customer limit orders that a member accepts in securities quoted on the OTCBB. Members handling customer limit orders, whether received from their own customers or from another member, are prohibited from trading at prices equal or superior to that of the customer limit order without executing the limit order. Members are under no obligation to accept limit orders from any customer.]

[(b) Members may avoid the obligation specified in paragraph (a) through the provision of price improvement. If a customer limit order is priced at or inside the current inside spread, however, the price improvement must be for a minimum of the lesser of $0.01 or one-half (1/2) of the current inside spread. For purposes of this rule, the inside spread shall be defined as the difference between the best reasonably available bid and offer in the subject security.]

[(c) Notwithstanding subparagraph (a) of this rule, a member may negotiate specific terms and conditions applicable to the acceptance of limit orders only with respect to such orders that are:]

[(1) for customer accounts that meet the definition of an "institutional account" as that term is defined in Rule 3110(c)(4); or]

[(2) for 10,000 shares or more, and greater than $20,000 in value.]

[(d) Contemporaneous trades]

[A member that trades through a held limit order must execute such limit order contemporaneously, or as soon as practicable, but in no case later than five minutes after the member has traded at a price more favorable than the customer's price.]

[(e) Application]

[(1) This rule shall apply, regardless of whether the subject security is additionally quoted in a separate quotation medium.]

[(2) This rule shall apply from 9:30 a.m. to 4:00 p.m. Eastern Time.]

* * * * *

(b) Not applicable.

(c) Not applicable.

2. <u>Procedures of the Self-Regulatory Organization</u>

The proposed rule change was approved by the Board of Directors of NASD Regulation, Inc. at its meeting on September 21, 2005, which authorized the filing of the rule change with the SEC. Counsel for The Nasdaq Stock Market and NASD Dispute Resolution have been provided an opportunity to consult with respect to the proposed rule change, pursuant to the Plan of Allocation and Delegation of Functions by NASD to its Subsidiaries. The Board of Governors of NASD had an opportunity to review the proposed rule change at its meeting on September 22, 2005. 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 will announce the effective date of the proposed rule change in a <u>Notice to Members</u> to be published no later than 60 days following Commission approval. NASD anticipates that the effective date will be 90 days following publication of the <u>Notice to Members</u> announcing Commission approval. As noted below, NASD is seeking comment on whether 90 days from the publication of a <u>Notice to Members</u> is adequate time for implementation of the proposal or whether additional implementation time may be needed and the reasons therefor.

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

(a) Purpose

Rule Filing History

On December 9, 2005, NASD filed with the Commission proposed rule change SR-NASD-2005-146, proposing to expand the scope of IM-2110-2 to apply to all OTC equity securities. On September 26, 2006, NASD filed Amendment No. 1 to SR-NASD-2005-146 (“Amendment No. 1”) to (1) make certain changes to the proposed rule text relating to the scope of IM-2110-2, the minimum level of price improvement and amendments to IM-2110-2 to reflect changes that have been approved and implemented, (2) clarify that the proposed application does not include options, and (3) delete certain text that is no longer necessary.

NASD is filing this Amendment No. 2 to SR-NASD-2005-146 (“Amendment No. 2”), which replaces and supersedes the prior filings in their entirety, to make certain clarifying and technical changes to the filing.

Proposal

Interpretive Material (IM) 2110-2, Trading Ahead of Customer Limit Order (commonly referred to as the “Manning Rule”) generally prohibits a member from trading for its own account in an exchange-listed security at a price that is equal to or better than an unexecuted customer limit order in that security, unless the member immediately thereafter executes the customer limit order at the price at which it traded for its own account or better. The legal underpinnings for the Manning Rule are a member’s basic fiduciary obligations and the requirement that a member must, in the conduct of its business, “observe high standards of commercial honor and just and equitable principles of trade.”[2]

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[2] See NASD Rule 2110.

IM-2110-2 applies to exchange-listed securities,[3] but does not apply to OTC equity securities. Rule 6541, however, extends the general principles of the Manning Rule to a subset of OTC equity securities, those that are quoted on the OTC Bulletin Board ("OTCBB"), but differs from IM-2110-2 in several respects, which are described in more detail below.

NASD is proposing to expand the scope of IM-2110-2 and any interpretive guidance thereunder to include OTC equity securities.[4] NASD believes that customer limit orders in OTC equity securities should be subject to the same order handling and customer protection requirements under the Manning Rule as exchange-listed securities. Given this proposed expansion of IM-2110-2 to OTC equity securities, NASD also is proposing to repeal Rule 6541. As noted above, although Rule 6541 is substantially

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3 On June 30, 2006, the Commission approved SR-NASD-2005-087, which amended certain NASD rules to reflect separation of The Nasdaq Stock Market, Inc. from NASD upon the operation of the Nasdaq Stock Market LLC as a national securities exchange. See Securities Exchange Act Release No. 54084 (June 30, 2006); 71 FR 38935 (July 10, 2006). SR-NASD-2005-087 became effective on August 1, 2006, the date upon which Nasdaq began operation as an exchange for Nasdaq-listed securities. As part of SR-NASD-2005-087, the Commission approved amendments to IM-2110-2 to reflect Nasdaq's approval and operation as a national securities exchange.

The SEC also approved further amendments to IM-2110-2 to codify NASD's existing position that IM-2110-2 applies to all members, whether acting as a market maker or not. These amendments became effective April 14, 2006. See Securities Exchange Act Release No. 53653 (April 14, 2006); 71 FR 20429 (April 20, 2006).

Lastly, the SEC approved the expansion of IM-2110-2, which previously applied to Nasdaq securities, to exchange-listed securities. See Securities Exchange Act Release No. 52210 (August 4, 2005); 70 FR 46897 (August 11, 2005). See also Notice to Members 05-64 (October 2005) (announcing SEC approval of the amendments to IM-2110-2, which became effective January 2, 2006).

4 The term "OTC equity securities" does not include options. See Rule 6610(d).

similar to the Manning Rule, it differs in its application in several ways. NASD believes that these distinctions in application no longer make sense and that having uniform limit order protection requirements across market sectors is appropriate. The most significant differences between IM-2110-2 and Rule 6541 and any related proposed changes to IM-2110-2 are summarized below.

First, both IM-2110-2 and Rule 6541 provide that a member is not deemed to have traded ahead of a customer limit order if the member provides a contemporaneous execution of the customer's order. For the purposes of IM-2110-2, contemporaneous has been interpreted to require execution as soon as possible, but absent reasonable and documented justification, within one minute.[5] In contrast, Rule 6541(d) provides a longer maximum time limit of five minutes, within which an execution of a customer order will be deemed to be contemporaneous with an execution for a member firm's account. The five-minute standard was intended to be an outside limit, absent extraordinary circumstances, and not a normal practice.[6] NASD believes that most customer limit orders are filled within a period shorter than five minutes following a proprietary triggering trade, and despite the more manual nature of the unlisted market, one minute is not an unreasonably short time to fill a customer order.

Second, both IM-2110-2 and Rule 6541 permit members to negotiate terms and conditions on the acceptance of certain large-sized limit orders. Such terms and conditions would permit the member to continue to trade along side of, or ahead of, the limit order, if the customer agrees. Rule 6541 applies a lower threshold requirement on

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5 See Notices to Members 95-67 (August 1995) and 98-78 (September 1998).

6 See Notice to Members 01-46 (July 2001).

the types of orders for which a member can negotiate such terms and conditions. Specifically, Rule 6541(c) only requires that an order be 10,000 shares or more and greater than $20,000 in value, while IM-2110-2 requires that an order be 10,000 shares or more and greater than $100,000 in value. This lower threshold for OTCBB securities was established due to the lower average dollar amount of trades in OTCBB securities relative to trades in exchange-listed securities.

NASD believes the higher value threshold requirement under IM-2110-2 should be applied to all securities uniformly. The value threshold of an order is intended to be an objective criteria upon which an assumption can be made that the order involves a best-efforts commitment and the commitment of substantial capital on the part of the member, and therefore, it is appropriate for the member to be able to place terms and conditions on the acceptance of that order. As such, NASD believes that it is the value and size of the customer order that is of significance in making this determination, not the average price of securities in a particular market sector.

Third, IM-2110-2 excludes limit orders that are marketable at the time of receipt (marketable limit orders), whereas the requirements under Rule 6541 apply to such orders. This exclusion to IM-2110-2 for marketable limit orders recognizes that marketable limit orders and market orders are functionally equivalent and, thus, customers placing marketable limit orders should not have an unwarranted advantage over market orders. If marketable limit orders were not excluded from the Manning Rule, the Rule’s operation could have the unintended consequence of providing marketable limit orders execution priority over market orders placed at the same time or prior to the marketable limit orders (commonly referred to as "jumping the queue").[7] As such, consistent with the current application of IM-2110-2, NASD staff believes that continuing to exclude marketable limit orders from the application of the Manning Rule is appropriate.[8]

Fourth, both IM-2110-2 and Rule 6541 apply only during certain specified time periods. Specifically, IM-2110-2 is applicable from 9:30 a.m. to 6:30 p.m. Eastern Time,[9] whereas Rule 6541 applies only during normal market hours of 9:30 a.m. to 4:00 p.m. Eastern Time. This difference in application for OTCBB securities was established due to the fact that, although the OTCBB service is available from 7:30 a.m. to 6:30 p.m., prices on the OTCBB are required to be firm only during the normal market hours.[10] Given that in some OTC equity securities there may be no quoting of the security at all, NASD believes that linking this requirement to whether quotes in the security are

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[7] See Securities Exchange Act Release No. 41990 (October 7, 1999) (File No. SR-NASD-99-44).

[8] Members also are restricted from trading ahead of marketable limit orders in Nasdaq and exchange-listed securities under recently approved Rule 2111, Trading Ahead of Customer Market Orders. Although Rule 2111 does not apply to OTC equity securities, it is consistent with a member's best execution obligations to execute marketable limit orders fully and promptly. Note: Rule 2111 became effective on January 9, 2006. See Securities Exchange Act Release No. 52226 (August 9, 2005); 70 FR 48219 (August 16, 2005) (File No. SR-NASD-2004-045). See also Notice to Members 05-69 (October 2005).

[9] A member may generally limit the life of a customer limit order to the period of 9:30 a.m. to 4 p.m. Eastern Time. If a customer does not formally assent to processing of the customer's limit order(s) during the extended hours period commencing after the normal close of the market, limit order protection will not apply to that customer's order. See footnote 1 to IM-2110-2.

[10] See Notice to Members 01-46 (July 2001).

required to be firm is not appropriate. As such, NASD believes the time period under the Manning Rule should be applied to all securities uniformly.

Lastly, both IM-2110-2 and Rule 6541 prescribe a minimum level of price-improvement that a member must provide to trade ahead of an unexecuted customer limit order. Specifically, the price-improvement standard currently set forth in IM-2110-2 provides that, where a member is holding a customer limit order priced at or inside the best inside market displayed in Nasdaq, the member may execute an incoming order on a proprietary basis without being obligated to execute the customer limit order if the member executes the incoming order at least $0.01 better than the price of the customer limit order. Further, if the customer limit order is priced outside the best inside market displayed in Nasdaq, then the member must execute the incoming order at the next superior minimum quotation increment permitted by Nasdaq (currently $0.01). In contrast, Rule 6541 provides that if the customer limit order is priced at or inside the current inside spread,[11] the price improvement is a minimum of the lesser of $0.01 or one-half (1/2) of the current inside spread.

On June 9, 2005, the SEC adopted Regulation NMS that, among other things, established a minimum price variation ("MPV") standard for NMS stocks.[12] Specifically,

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[11] For purposes of Rule 6541, the inside spread is defined as the difference between the best reasonably available bid and offer in the subject security. See Rule 6541. The determination of what is "reasonably available" is largely factual and best determined on a case-by-case basis. See Notice to Members 01-46 (July 2001).

[12] Given that Regulation NMS only applies to national market system ("NMS") securities and NASD believes that the same potential harms associated with sub-penny quoting that exist in NMS securities also exist in OTC Equity Securities, NASD filed a proposed rule change that would prohibit members from displaying, ranking or accepting a bid or offer, an order or an indication of interest in any OTC Equity Securities in any quotation medium priced in an

Regulation NMS adopted Rule 612 under the Act that generally prohibits market participants from accepting, ranking or displaying orders, quotations, or indications of interest in a pricing increment smaller than a penny, except for orders, quotations, or indications of interest that are priced at less than $1.00 per share.[13] If the order, quotation, or indication of interest is priced less than $1.00 per share, the minimum pricing increment is $0.0001.

Given the implementation of Rule 612 of Regulation NMS,[14] NASD is proposing to amend the price-improvement provisions in IM-2110-2 to revise and make uniform for all equity securities the minimum price-improvement standards as follows. For customer limit orders priced greater than or equal to $1.00 that are at or inside the best inside market, the minimum amount of price improvement required would be $0.01. For customer limit orders priced less than $1.00 that are at or inside the best inside market, the minimum amount of price improvement required would be the lesser of $0.01 or one-half (1/2) of the current inside spread. For customer limit orders priced outside the best inside market, the member would be required to execute the incoming order at a price at

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increment smaller than $0.01 if such bid or offer, order or indication of interest is priced equal to or greater than $1.00 per share. Members also would be prohibited from displaying, ranking or accepting a bid, offer, an order or an indication of interest in any OTC Equity Security priced in an increment smaller than $0.0001 if such bid or offer, order or indication of interest is priced equal to or greater than $0.01 per share and less than $1.00 per share. See Securities Exchange Act Release No. 52280 (August 17, 2005); 70 FR 49959 (August 25, 2005) (File No. SR-NASD-2005-095). See also Securities Exchange Act Release No. 53024 (December 27, 2005); 71 FR 159 (January 3, 2006).

13 See 17 CFR 242.612.

14 Rule 612 of Regulation NMS became effective January 31, 2006. See Securities Exchange Act Release No. 52196 (August 2, 2005); 70 FR 45529 (August 8, 2005).

or inside the best inside market for the security. Lastly, for customer limit orders in securities for which there is no published inside market, the minimum amount of price improvement required is $0.01. NASD believes these amendments are necessary to support the new pricing formats and to have uniform price improvement standards across market sectors.

In addition, given that the definition of an "NMS stock" effectively covers stocks listed on a national securities exchange, NASD is proposing to replace the term "exchange-listed security" with the term "NMS stock".[15]

Finally, IM-2110-2 currently contains provisions that prescribe the minimum level of price-improvement for securities trading in fractions. Given that securities no longer trade in fractions, NASD proposes to delete such fractional references as part of this proposed rule change.

As a result of the proposed changes described above, NASD is proposing to apply limit order protection requirements uniformly to all equity securities by extending the scope of the Manning Rule to OTC equity securities.[16] In doing so, NASD also is

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15 The term "NMS stock" is defined in Rule 600(b)(47) of Regulation NMS as any NMS security other than an option. See Rule 600(b)(47) of Regulation NMS. The term "NMS security" is defined in Rule 600(b)(46) of Regulation NMS as any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options. See Rule 600(b)(46) of Regulation NMS. As such, the term "NMS stock," for purposes of IM-2110-2, would include, among other things, exchange traded funds (ETFs).

16 In addition to the differences between IM-2110-2 and Rule 6541 described above, the SEC also approved amendments to IM-2110-2 that generally require a member that has traded ahead of a customer limit order at a price that is more favorable than the customer limit order price, to pass along that price improvement to the customer limit order. This requirement currently does not

proposing to repeal Rule 6541, as those requirements would be subsumed in the proposed expansion of the Manning Rule.

NASD will announce the effective date of the proposed rule change in a Notice to Members to be published no later than 60 days following Commission approval. In recognition of the technological and systems changes the proposed rule change may require, the effective date will be 90 days following publication of the Notice to Members announcing Commission approval.

Among other issues relating to the filing, NASD is seeking comment on the proposed implementation time. Specifically, NASD is seeking comment on whether 90 days from the publication of a Notice to Members is adequate time for implementation of the proposal or whether additional implementation time may be needed and the reasons therefor.

(b) Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[17] 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 improve treatment of customer limit orders and promote investor protection.

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apply under Rule 6541. See Securities Exchange Act Release No. 52210 (August 4, 2005); 70 FR 46897 (August 11, 2005) (File No. SR-NASD-2004-089). See also Notice to Members 05-64 (October 2005).

[17] 15 U.S.C. 78o–3(b)(6).

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 were neither solicited nor received.

6. Extension of Time Period for Commission Action

NASD does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.[18]

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

Not applicable.

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

Not applicable.

9. Exhibits

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

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[18] 15 U.S.C. 78s(b)(2).

Federal Register.

Exhibit 4. Exhibit 4 shows the full text of rule change marking changes from Amendment No. 1, with the changes in Amendment No. 1 shown as if adopted, and the new language in this Amendment No. 2 marked to show additions and deletions.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-NASD-2005-146)

Self-Regulatory Organizations: National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change to Expand the Scope of IM-2110-2 Relating to Trading Ahead of Customer Limit Orders to Apply to All OTC Equity Securities

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") Amendment No. 2 to the proposed rule change[3] as described in Items I, II, and III below, which Items have been prepared by NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

NASD is proposing to expand the scope of Interpretive Material (IM) 2110-2 relating to trading ahead of customer limit orders to apply to all over-the-counter ("OTC") equity securities.

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

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

3 On December 9, 2005, NASD filed with the Commission proposed rule change SR-NASD-2005-146, proposing to expand the scope of IM-2110-2 to all OTC equity securities. On September 26, 2006, NASD filed Amendment No. 1 to SR-NASD-2005-146. This Amendment No. 2 to SR-NASD-2005-146 replaces and supersedes the prior rule filings in their entirety.

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IM-2110-2. Trading Ahead of Customer Limit Order

(a) General Application

To continue to ensure investor protection and enhance market quality, NASD's Board of Governors is issuing an interpretation to NASD Rules dealing with member firms' treatment of their customer limit orders in <u>NMS stocks and OTC equity</u>[exchange-listed] securities. This interpretation, which is applicable from 9:30 a.m. to 6:30 p.m. Eastern Time, will require members to handle their customer limit orders with all due care so that members do not "trade ahead" of those limit orders. Thus, members that handle customer limit orders, whether received from their own customers or from another member, are prohibited from trading at prices equal or superior to that of the limit order without executing the limit order. In the interests of investor protection, NASD is eliminating the so-called disclosure "safe harbor" previously established for members that fully disclosed to their customers the practice of trading ahead of a customer limit order by a market-making firm.[1] <u>For purposes of this interpretation, (1) "NMS stock" shall have the meaning set forth in SEC Rule 600(b)(47) of Regulation NMS and (2) "OTC equity security" shall have the meaning set forth in Rule 6610(d).</u>

Rule 2110 states that:

A member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade.

Rule 2320, the Best Execution Rule, states that:

In any transaction for or with a customer, a member and persons associated with a member shall use reasonable diligence to ascertain the best inter-dealer market for the subject security and buy or sell in such a market so that the resultant price to the customer is as favorable as possible to the customer under prevailing market conditions.

Interpretation

The following interpretation of Rule 2110 has been approved by the Board:

A member firm that accepts and holds an unexecuted limit order from its customer (whether its own customer or a customer of another member) in an <u>NMS stock or OTC equity</u>[exchange-listed] security and that continues to trade the subject security for its own account at prices that would satisfy the customer's limit order, without executing that limit order, shall be deemed to have acted in a manner inconsistent with just and equitable principles of trade, in violation of Rule 2110, provided that a member firm may negotiate specific terms and conditions applicable to the acceptance of limit orders only with respect to limit orders that are: (a) for customer accounts that meet the definition of an "institutional account" as that term is defined in Rule 3110(c)(4); or (b) 10,000 shares or more, unless such orders are less than $100,000 in value. In the event that a member trades ahead of an unexecuted customer limit order at a price that is better than the unexecuted limit order, such member is required to execute the limit order at the price received by the member or better. Nothing in this interpretation, however, requires members to accept limit orders from any customer.

By rescinding the safe harbor position and adopting this interpretation, NASD wishes to emphasize that members may not trade ahead of their customer limit orders even if the member had in the past fully disclosed the practice to its customers prior to accepting limit orders. NASD believes that, pursuant to Rule 2110, members accepting and holding unexecuted customer limit orders owe certain duties to their customers and the customers of other member firms that may not be overcome or cured with disclosure of trading practices that include trading ahead of the customer's order. The terms and conditions under which institutional account or appropriately sized customer limit orders are accepted must be made clear to customers at the time the order is accepted by the firm so that trading ahead in the firm's market-making capacity does not occur.

[As outlined in NASD Notice to Members 97-57, the minimum amount of price improvement necessary in order for a member to execute an incoming order on a proprietary basis when holding an unexecuted limit order for a Nasdaq security trading in fractions, and not be required to execute the held limit order, is as follows:]

- [If actual spread is greater than 1/16 of a point, a firm must price improve an incoming order by at least a 1/16. For stocks priced under $10 (which are quoted in 1/32 increments), the firm must price improve by at least 1/64.]
- [If actual spread is the minimum quotation increment, a firm must price improve an incoming order by one-half the minimum quotation increment.]

[For Nasdaq securities authorized for trading in decimals pursuant to the Decimals Implementation Plan For the Equities and Options Markets, t]The minimum amount of price improvement necessary in order for a member to execute an incoming order on a proprietary basis [in a security trading in decimals] when holding an unexecuted limit order in that same security, and not be required to execute the held limit order, is as follows:

1) For customer limit orders priced greater than or equal to $1.00 that are at or inside the best inside market [displayed in Nasdaq], the minimum amount of price improvement required is $0.01; [and]

2) For customer limit orders priced less than $1.00 that are at or inside the best inside market, the minimum amount of price improvement required is the lesser of $0.01 or one-half (1/2) of the current inside spread;

3) For customer limit orders priced outside the best inside market [displayed in Nasdaq], the member must price improve the incoming order by executing the incoming order at a price at or inside the best inside market for the security; and[at least equal to the next superior minimum quotation increment in Nasdaq (currently $0.01)]

4) For customer limit orders in securities for which there is no published inside market, the minimum amount of price improvement required is $0.01.

NASD also wishes to emphasize that all members accepting customer limit orders owe those customers duties of "best execution" regardless of whether the orders are executed through the member or sent to another member for execution. As set out above, the Best Execution Rule requires members to use reasonable diligence to ascertain the best inter-dealer market for the security and buy or sell in such a market so that the price to the customer is as favorable as possible under prevailing market conditions. NASD emphasizes that order entry firms should continue to monitor routinely the handling of their customers' limit orders regarding the quality of the execution received.

(b) through (c) No change.

1 For purposes of the operation of certain [Nasdaq] transaction and quotation reporting systems and facilities during the period from 4 p.m. to 6:30 p.m. Eastern Time, members may generally limit the life of a customer limit order to the period of 9:30 a.m. to 4 p.m. Eastern Time. If a customer does not formally assent ("opt-in") to processing of the customer's limit order(s) during the extended hours period commencing after the normal close of the [Nasdaq] market, limit order protection will not apply to that customer's order(s).

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6541. [Limit Order Protection]<u>Reserved.</u>

[(a) Members shall be prohibited from "trading ahead" of customer limit orders that a member accepts in securities quoted on the OTCBB. Members handling customer limit orders, whether received from their own customers or from another member, are prohibited from trading at prices equal or superior to that of the customer limit order without executing the limit order. Members are under no obligation to accept limit orders from any customer.]

[(b) Members may avoid the obligation specified in paragraph (a) through the provision of price improvement. If a customer limit order is priced at or inside the current inside spread, however, the price improvement must be for a minimum of the lesser of $0.01 or one-half (1/2) of the current inside spread. For purposes of this rule, the inside spread shall be defined as the difference between the best reasonably available bid and offer in the subject security.]

[(c) Notwithstanding subparagraph (a) of this rule, a member may negotiate specific terms and conditions applicable to the acceptance of limit orders only with respect to such orders that are:]

[(1) for customer accounts that meet the definition of an "institutional account" as that term is defined in Rule 3110(c)(4); or]

[(2) for 10,000 shares or more, and greater than $20,000 in value.]

[(d) Contemporaneous trades]

[A member that trades through a held limit order must execute such limit order contemporaneously, or as soon as practicable, but in no case later than five minutes after the member has traded at a price more favorable than the customer's price.]

[(e) Application]

[(1) This rule shall apply, regardless of whether the subject security is additionally quoted in a separate quotation medium.]

[(2) This rule shall apply from 9:30 a.m. to 4:00 p.m. Eastern Time.]

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

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

Rule Filing History

On December 9, 2005, NASD filed with the Commission proposed rule change SR-NASD-2005-146, proposing to expand the scope of IM-2110-2 to apply to all OTC equity securities. On September 26, 2006, NASD filed Amendment No. 1 to SR-NASD-2005-146 ("Amendment No. 1") to (1) make certain changes to the proposed rule text relating to the scope of IM-2110-2, the minimum level of price improvement and amendments to IM-2110-2 to reflect changes that have been approved and implemented, (2) clarify that the proposed application does not include options, and (3) delete certain text that is no longer necessary.

NASD is filing this Amendment No. 2 to SR-NASD-2005-146 ("Amendment No. 2"), which replaces and supersedes the prior filings in their entirety, to make certain clarifying and technical changes to the filing.

Proposal

Interpretive Material (IM) 2110-2, Trading Ahead of Customer Limit Order (commonly referred to as the "Manning Rule") generally prohibits a member from trading for its own account in an exchange-listed security at a price that is equal to or better than an unexecuted customer limit order in that security, unless the member immediately thereafter executes the customer limit order at the price at which it traded for its own account or better. The legal underpinnings for the Manning Rule are a member's basic fiduciary obligations and the requirement that a member must, in the conduct of its business, "observe high standards of commercial honor and just and equitable principles of trade."[4]

IM-2110-2 applies to exchange-listed securities,[5] but does not apply to OTC equity securities. Rule 6541, however, extends the general principles of the Manning Rule to a subset of OTC equity securities, those that are quoted on the OTC Bulletin Board ("OTCBB"), but differs from IM-2110-2 in several respects, which are described in more detail below.

NASD is proposing to expand the scope of IM-2110-2 and any interpretive guidance thereunder to include OTC equity securities.[6] NASD believes that customer

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4 See NASD Rule 2110.

5 On June 30, 2006, the Commission approved SR-NASD-2005-087, which amended certain NASD rules to reflect separation of The Nasdaq Stock Market, Inc. from NASD upon the operation of the Nasdaq Stock Market LLC as a national securities exchange. See Securities Exchange Act Release No. 54084 (June 30, 2006); 71 FR 38935 (July 10, 2006). SR-NASD-2005-087 became effective on August 1, 2006, the date upon which Nasdaq began operation as an exchange for Nasdaq-listed securities. As part of SR-NASD-2005-087, the Commission approved amendments to IM-2110-2 to reflect Nasdaq's approval and operation as a national securities exchange.

The SEC also approved further amendments to IM-2110-2 to codify NASD's existing position that IM-2110-2 applies to all members, whether acting as a market maker or not. These amendments became effective April 14, 2006. See Securities Exchange Act Release No. 53653 (April 14, 2006); 71 FR 20429 (April 20, 2006).

Lastly, the SEC approved the expansion of IM-2110-2, which previously applied to Nasdaq securities, to exchange-listed securities. See Securities Exchange Act Release No. 52210 (August 4, 2005); 70 FR 46897 (August 11, 2005). See also Notice to Members 05-64 (October 2005) (announcing SEC approval of the amendments to IM-2110-2, which became effective January 2, 2006).

6 The term "OTC equity securities" does not include options. See Rule 6610(d).

limit orders in OTC equity securities should be subject to the same order handling and customer protection requirements under the Manning Rule as exchange-listed securities. Given this proposed expansion of IM-2110-2 to OTC equity securities, NASD also is proposing to repeal Rule 6541. As noted above, although Rule 6541 is substantially similar to the Manning Rule, it differs in its application in several ways. NASD believes that these distinctions in application no longer make sense and that having uniform limit order protection requirements across market sectors is appropriate. The most significant differences between IM-2110-2 and Rule 6541 and any related proposed changes to IM-2110-2 are summarized below.

First, both IM-2110-2 and Rule 6541 provide that a member is not deemed to have traded ahead of a customer limit order if the member provides a contemporaneous execution of the customer's order. For the purposes of IM-2110-2, contemporaneous has been interpreted to require execution as soon as possible, but absent reasonable and documented justification, within one minute.[7] In contrast, Rule 6541(d) provides a longer maximum time limit of five minutes, within which an execution of a customer order will be deemed to be contemporaneous with an execution for a member firm's account. The five-minute standard was intended to be an outside limit, absent extraordinary circumstances, and not a normal practice.[8] NASD believes that most customer limit orders are filled within a period shorter than five minutes following a

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7 See Notices to Members 95-67 (August 1995) and 98-78 (September 1998).

8 See Notice to Members 01-46 (July 2001).

proprietary triggering trade, and despite the more manual nature of the unlisted market, one minute is not an unreasonably short time to fill a customer order.

Second, both IM-2110-2 and Rule 6541 permit members to negotiate terms and conditions on the acceptance of certain large-sized limit orders. Such terms and conditions would permit the member to continue to trade along side of, or ahead of, the limit order, if the customer agrees. Rule 6541 applies a lower threshold requirement on the types of orders for which a member can negotiate such terms and conditions. Specifically, Rule 6541(c) only requires that an order be 10,000 shares or more and greater than $20,000 in value, while IM-2110-2 requires that an order be 10,000 shares or more and greater than $100,000 in value. This lower threshold for OTCBB securities was established due to the lower average dollar amount of trades in OTCBB securities relative to trades in exchange-listed securities.

NASD believes the higher value threshold requirement under IM-2110-2 should be applied to all securities uniformly. The value threshold of an order is intended to be an objective criteria upon which an assumption can be made that the order involves a best-efforts commitment and the commitment of substantial capital on the part of the member, and therefore, it is appropriate for the member to be able to place terms and conditions on the acceptance of that order. As such, NASD believes that it is the value and size of the customer order that is of significance in making this determination, not the average price of securities in a particular market sector.

Third, IM-2110-2 excludes limit orders that are marketable at the time of receipt (marketable limit orders), whereas the requirements under Rule 6541 apply to such orders. This exclusion to IM-2110-2 for marketable limit orders recognizes that marketable limit orders and market orders are functionally equivalent and, thus, customers placing marketable limit orders should not have an unwarranted advantage over market orders. If marketable limit orders were not excluded from the Manning Rule, the Rule's operation could have the unintended consequence of providing marketable limit orders execution priority over market orders placed at the same time or prior to the marketable limit orders (commonly referred to as "jumping the queue").[9] As such, consistent with the current application of IM-2110-2, NASD staff believes that continuing to exclude marketable limit orders from the application of the Manning Rule is appropriate.[10]

Fourth, both IM-2110-2 and Rule 6541 apply only during certain specified time periods. Specifically, IM-2110-2 is applicable from 9:30 a.m. to 6:30 p.m. Eastern Time,[11] whereas Rule 6541 applies only during normal market hours of 9:30 a.m. to 4:00

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9 See Securities Exchange Act Release No. 41990 (October 7, 1999) (File No. SR-NASD-99-44).

10 Members also are restricted from trading ahead of marketable limit orders in Nasdaq and exchange-listed securities under recently approved Rule 2111, Trading Ahead of Customer Market Orders. Although Rule 2111 does not apply to OTC equity securities, it is consistent with a member's best execution obligations to execute marketable limit orders fully and promptly. Note: Rule 2111 became effective on January 9, 2006. See Securities Exchange Act Release No. 52226 (August 9, 2005); 70 FR 48219 (August 16, 2005) (File No. SR-NASD-2004-045). See also Notice to Members 05-69 (October 2005).

11 A member may generally limit the life of a customer limit order to the period of 9:30 a.m. to 4 p.m. Eastern Time. If a customer does not formally assent to processing of the customer's limit order(s) during the extended hours period commencing after the normal close of the market, limit order protection will not apply to that customer's order. See footnote 1 to IM-2110-2.

p.m. Eastern Time. This difference in application for OTCBB securities was established due to the fact that, although the OTCBB service is available from 7:30 a.m. to 6:30 p.m., prices on the OTCBB are required to be firm only during the normal market hours.[12] Given that in some OTC equity securities there may be no quoting of the security at all, NASD believes that linking this requirement to whether quotes in the security are required to be firm is not appropriate. As such, NASD believes the time period under the Manning Rule should be applied to all securities uniformly.

Lastly, both IM-2110-2 and Rule 6541 prescribe a minimum level of price-improvement that a member must provide to trade ahead of an unexecuted customer limit order. Specifically, the price-improvement standard currently set forth in IM-2110-2 provides that, where a member is holding a customer limit order priced at or inside the best inside market displayed in Nasdaq, the member may execute an incoming order on a proprietary basis without being obligated to execute the customer limit order if the member executes the incoming order at least $0.01 better than the price of the customer limit order. Further, if the customer limit order is priced outside the best inside market displayed in Nasdaq, then the member must execute the incoming order at the next superior minimum quotation increment permitted by Nasdaq (currently $0.01). In contrast, Rule 6541 provides that if the customer limit order is priced at or inside the current inside spread,[13] the price improvement is a minimum of the lesser of $0.01 or one-half (1/2) of the current inside spread.

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[12] See Notice to Members 01-46 (July 2001).

[13] For purposes of Rule 6541, the inside spread is defined as the difference between the best reasonably available bid and offer in the subject security. See Rule 6541.

On June 9, 2005, the SEC adopted Regulation NMS that, among other things, established a minimum price variation ("MPV") standard for NMS stocks.[14] Specifically, Regulation NMS adopted Rule 612 under the Act that generally prohibits market participants from accepting, ranking or displaying orders, quotations, or indications of interest in a pricing increment smaller than a penny, except for orders, quotations, or indications of interest that are priced at less than $1.00 per share.[15] If the order, quotation, or indication of interest is priced less than $1.00 per share, the minimum pricing increment is $0.0001.

Given the implementation of Rule 612 of Regulation NMS,[16] NASD is proposing to amend the price-improvement provisions in IM-2110-2 to revise and make uniform for

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The determination of what is "reasonably available" is largely factual and best determined on a case-by-case basis. See Notice to Members 01-46 (July 2001).

14 Given that Regulation NMS only applies to national market system ("NMS") securities and NASD believes that the same potential harms associated with sub-penny quoting that exist in NMS securities also exist in OTC Equity Securities, NASD filed a proposed rule change that would prohibit members from displaying, ranking or accepting a bid or offer, an order or an indication of interest in any OTC Equity Securities in any quotation medium priced in an increment smaller than $0.01 if such bid or offer, order or indication of interest is priced equal to or greater than $1.00 per share. Members also would be prohibited from displaying, ranking or accepting a bid, offer, an order or an indication of interest in any OTC Equity Security priced in an increment smaller than $0.0001 if such bid or offer, order or indication of interest is priced equal to or greater than $0.01 per share and less than $1.00 per share. See Securities Exchange Act Release No. 52280 (August 17, 2005); 70 FR 49959 (August 25, 2005) (File No. SR-NASD-2005-095). See also Securities Exchange Act Release No. 53024 (December 27, 2005); 71 FR 159 (January 3, 2006).

15 See 17 CFR 242.612.

16 Rule 612 of Regulation NMS became effective January 31, 2006. See Securities Exchange Act Release No. 52196 (August 2, 2005); 70 FR 45529 (August 8, 2005).

all equity securities the minimum price-improvement standards as follows. For customer limit orders priced greater than or equal to $1.00 that are at or inside the best inside market, the minimum amount of price improvement required would be $0.01. For customer limit orders priced less than $1.00 that are at or inside the best inside market, the minimum amount of price improvement required would be the lesser of $0.01 or one-half (1/2) of the current inside spread. For customer limit orders priced outside the best inside market, the member would be required to execute the incoming order at a price at or inside the best inside market for the security. Lastly, for customer limit orders in securities for which there is no published inside market, the minimum amount of price improvement required is $0.01. NASD believes these amendments are necessary to support the new pricing formats and to have uniform price improvement standards across market sectors.

In addition, given that the definition of an "NMS stock" effectively covers stocks listed on a national securities exchange, NASD is proposing to replace the term "exchange-listed security" with the term "NMS stock".[17]

Finally, IM-2110-2 currently contains provisions that prescribe the minimum level of price-improvement for securities trading in fractions. Given that securities no

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[17] The term "NMS stock" is defined in Rule 600(b)(47) of Regulation NMS as any NMS security other than an option. See Rule 600(b)(47) of Regulation NMS. The term "NMS security" is defined in Rule 600(b)(46) of Regulation NMS as any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options. See Rule 600(b)(46) of Regulation NMS. As such, the term "NMS stock," for purposes of IM-2110-2, would include, among other things, exchange traded funds (ETFs).

longer trade in fractions, NASD proposes to delete such fractional references as part of this proposed rule change.

As a result of the proposed changes described above, NASD is proposing to apply limit order protection requirements uniformly to all equity securities by extending the scope of the Manning Rule to OTC equity securities.[18] In doing so, NASD also is proposing to repeal Rule 6541, as those requirements would be subsumed in the proposed expansion of the Manning Rule.

NASD will announce the effective date of the proposed rule change in a Notice to Members to be published no later than 60 days following Commission approval. In recognition of the technological and systems changes the proposed rule change may require, the effective date will be 90 days following publication of the Notice to Members announcing Commission approval.

Among other issues relating to the filing, NASD is seeking comment on the proposed implementation time. Specifically, NASD is seeking comment on whether 90 days from the publication of a Notice to Members is adequate time for implementation of the proposal or whether additional implementation time may be needed and the reasons therefor.

2. Statutory Basis

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18 In addition to the differences between IM-2110-2 and Rule 6541 described above, the SEC also approved amendments to IM-2110-2 that generally require a member that has traded ahead of a customer limit order at a price that is more favorable than the customer limit order price, to pass along that price improvement to the customer limit order. This requirement currently does not apply under Rule 6541. See Securities Exchange Act Release No. 52210 (August 4, 2005); 70 FR 46897 (August 11, 2005) (File No. SR-NASD-2004-089). See also Notice to Members 05-64 (October 2005).

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[19] 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 improve treatment of customer limit orders and promote investor protection.

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 were neither solicited nor received.

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

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

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

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

IV. Solicitation of Comments

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[19] 15 U.S.C. 78o–3(b)(6).

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

Electronic Comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASD-2005-146 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-2005-146. 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-2005-146 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.[20]

Nancy M. Morris

Secretary

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[20] 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 in Amendment No. 1 shown as if adopted, and the new language in this Amendment No. 2 marked to show additions and deletions.

Proposed deletions in this Amendment No. 2 appear in brackets.

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IM-2110-2. Trading Ahead of Customer Limit Order

(a) General Application

To continue to ensure investor protection and enhance market quality, NASD's Board of Governors is issuing an interpretation to NASD Rules dealing with member firms' treatment of their customer limit orders in NMS stocks and OTC equity securities. This interpretation, which is applicable from 9:30 a.m. to 6:30 p.m. Eastern Time, will require members to handle their customer limit orders with all due care so that members do not "trade ahead" of those limit orders. Thus, members that handle customer limit orders, whether received from their own customers or from another member, are prohibited from trading at prices equal or superior to that of the limit order without executing the limit order. In the interests of investor protection, NASD is eliminating the so-called disclosure "safe harbor" previously established for members that fully disclosed to their customers the practice of trading ahead of a customer limit order by a market-making firm.[1] For purposes of this interpretation, (1) "NMS stock" shall have the meaning set forth in SEC Rule 600(b)(47) of Regulation NMS and (2) "OTC equity security" shall have the meaning set forth in Rule 6610(d).

Rule 2110 states that:

> A member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade.

Rule 2320, the Best Execution Rule, states that:

> In any transaction for or with a customer, a member and persons associated with a member shall use reasonable diligence to ascertain the best inter-dealer market for the subject security and buy or sell in such a market so that the resultant price to the customer is as favorable as possible to the customer under prevailing market conditions.

Interpretation

The following interpretation of Rule 2110 has been approved by the Board:

A member firm that accepts and holds an unexecuted limit order from its customer (whether its own customer or a customer of another member) in an NMS stock or OTC equity security and that continues to trade the subject security for its own account at prices that would satisfy the customer's limit order, without executing that limit order, shall be deemed to have acted in a manner inconsistent with just and equitable principles of trade, in violation of Rule 2110, provided that a member firm may negotiate specific terms and conditions applicable to the acceptance of limit orders only with respect to limit orders that are: (a) for customer accounts that meet the definition of an "institutional account" as that term is defined in Rule 3110(c)(4); or (b) 10,000 shares or more, unless such orders are less than $100,000 in value. In the event that a member trades ahead of an unexecuted customer limit order at a price that is better than the unexecuted limit order, such member is required to execute the limit order at the price received by the member or better. Nothing in this interpretation, however, requires members to accept limit orders from any customer.

By rescinding the safe harbor position and adopting this interpretation, NASD wishes to emphasize that members may not trade ahead of their customer limit orders even if the member had in the past fully disclosed the practice to its customers prior to accepting limit orders. NASD believes that, pursuant to Rule 2110, members accepting and holding unexecuted customer limit orders owe certain duties to their customers and the customers of other member firms that may not be overcome or cured with disclosure of trading practices that include trading ahead of the customer's order. The terms and conditions under which institutional account or appropriately sized customer limit orders are accepted must be made clear to customers at the time the order is accepted by the firm so that trading ahead in the firm's market-making capacity does not occur.

The minimum amount of price improvement necessary in order for a member to execute an incoming order on a proprietary basis when holding an unexecuted limit order in that same security, and not be required to execute the held limit order, is as follows:

1) For customer limit orders priced greater than or equal to $1.00 that are at or inside the best inside market, the minimum amount of price improvement required is $0.01;

2) For customer limit orders priced less than $1.00 that are at or inside the best inside market, the minimum amount of price improvement required is the lesser of $0.01 or one-half (1/2) of the current inside spread;

3) For customer limit orders priced outside the best inside market, the member must price improve the incoming order by executing the incoming order at a price at or inside the best inside market for the security; and

4) For customer limit orders in securities for which there is no published inside market, the minimum amount of price improvement required is $0.01.

NASD also wishes to emphasize that all members accepting customer limit orders owe those customers duties of "best execution" regardless of whether the orders are executed through the member or sent to another member for execution. As set out above, the Best Execution Rule requires members to use reasonable diligence to ascertain the best inter-dealer market for the security and buy or sell in such a market so that the price to the customer is as favorable as possible under prevailing market conditions. NASD emphasizes that order entry firms should continue to monitor routinely the handling of their customers' limit orders regarding the quality of the execution received.

(b) through (c) No change.

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[1] For purposes of the operation of certain [Nasdaq] transaction and quotation reporting systems and facilities during the period from 4 p.m. to 6:30 p.m. Eastern Time, members may generally limit the life of a customer limit order to the period of 9:30 a.m. to 4 p.m. Eastern Time. If a customer does not formally assent ("opt-in") to processing of the customer's limit order(s) during the extended hours period commencing after the normal close of the [Nasdaq] market, limit order protection will not apply to that customer's order(s).

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