

IV. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of Section 6 of the Act⁹ and the rules and regulations thereunder applicable to a national securities exchange.¹⁰ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹¹ which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposed change to clarify the requirements of the Exchange's priority rule is designed to provide both investors and specialists with a better understanding of a specialist's obligations. The Commission further believes that the proposed change to require specialists to make use of order match functionalities, except under limited circumstances, could prevent potential trading ahead violations from occurring by ensuring that eligible orders on the book are executed in place of the specialist's proprietary interest.

The Commission finds good cause for approving Amendment No. 3 to the proposed rule change prior to the thirtieth day after publishing notice of Amendment No. 3 in the **Federal Register** pursuant to Section 19(b)(2) of the Act.¹² The Commission believes that the changes proposed in Amendment No. 3 clarify the application of the Exchange's priority rule and proposed exception to the requirement to use order match functionalities. Further, the Commission believes the proposal in Amendment No. 3 to eliminate one of the exceptions proposed in the Notice reflects the specialist's obligations under the Exchange's rules.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹³ that the proposed rule change (SR-CHX-2005-01), as amended by Amendment Nos. 1,

2, and 3, is hereby approved, and that Amendment No. 3 is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6-12184 Filed 7-28-06; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54203; File No. SR-NASD-2006-089]

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

July 25, 2006.

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 July 21, 2006, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by NASD. NASD has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b-4 under the Act,³ which renders the proposal effective upon receipt of this filing by the Commission. NASD proposes to implement the proposed rule change on the date on which The Nasdaq Stock Market LLC (the "Nasdaq Exchange") commences operation as a national securities exchange for Nasdaq-listed securities. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

NASD is proposing to amend NASD Rule 5100 to allow members to use, for a transitional period only, the Nasdaq Exchange best (inside) bid rather than the national best (inside) bid for purposes of application of the rule. Pursuant to SR-NASD-2005-087, Rule

5100 will become effective on the date upon which the Nasdaq Exchange operates as a national securities exchange for Nasdaq-listed securities.⁴ Currently, that date is projected to be August 1, 2006.

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

* * * * *

5000. Trading Other Than on an Exchange

* * * * *

5100. Short Sale Rule

(a) With respect to trades reported to the ADF or the Trade Reporting Facility, no member shall effect a short sale in a Nasdaq Global Market Security (as that term is defined in Rule 4200) otherwise than on an exchange for the account of a customer or for its own account at or below the current national best (inside) bid when the current national best (inside) bid is below the preceding national best (inside) bid in the security. *In addition, for a transitional period ending on November 3, 2006, members may use the Nasdaq Exchange best (inside) bid rather than the national best (inside) bid for purposes of the application of this rule, provided that the member has submitted prior written notification to NASD of this selection. Members are required to use the same bid tick test on a firm-wide basis. A member using the Nasdaq Exchange best (inside) bid may not use the national best (inside) bid prior to the end of the transitional period unless the member submits prior written notification to NASD of this change.* For the purposes of this rule, the term "customer" includes a non-member broker-dealer.

(b) through (l) No Change.

* * * * *

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

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

⁴ NASD filed SR-NASD-2005-987 on July 11, 2005 and Amendment No. 1 on June 15, 2006. The Commission approved SR-NASD-2005-087, as amended, on June 30, 2006. See Exchange Act Release No. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006).

⁹ 15 U.S.C. 78f.

¹⁰ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹¹ 15 U.S.C. 78f(b)(5).

¹² 15 U.S.C. 78s(b)(2). Pursuant to Section 19(b)(2) of the Act, the Commission may not approve any proposed rule change, or amendment thereto, prior to the thirtieth day after the date of publication of the notice thereof, unless the Commission finds good cause for so doing.

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 17 CFR 200.30-3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4(f)(6).

and C below, of the most significant aspects of such statements.

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

1. Purpose

Background

On June 30, 2006, the Commission approved SR-NASD-2005-087.⁵ Among other things, SR-NASD-2005-087 proposed (1) amendments to the NASD Delegation Plan, NASD By-Laws and NASD rules to reflect a proposed phased implementation strategy for the operation of the Nasdaq Exchange as a national securities exchange with respect to Nasdaq-listed securities during a transitional period, and (2) rules for reporting transactions effected otherwise than on an exchange to the new Trade Reporting Facility.

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

Proposed Amendment to Rule 5100

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

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

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

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

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁷ which requires, among other things, that NASD rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change will protect investors because it will afford members sufficient time to make necessary systems adjustments to ensure compliance with the Short Sale Rule.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Written comments were neither solicited nor received.

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

Because the foregoing proposed rule change does not:

- (i) Significantly affect the protection of investors or the public interest;
- (ii) Impose any significant burden on competition; and

amendment will be automatically deleted from the NASD Manual without submission of another proposed rule change.

⁷ 15 U.S.C. 78o-3(b)(6).

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.⁸ A proposed rule change filed under 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.⁹ However, Rule 19b-4(f)(6)(iii)¹⁰ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest.

NASD has requested that the Commission waive the 30-day pre-operative delay and the five-day pre-filing notice requirement and designate the proposed rule change, as amended, to become effective upon filing. NASD believes that the waiver of the five-day pre-filing requirement is necessary so that members will have certainty with respect to this change and can be formally notified immediately. NASD believes that the waiver of the 30-day operative requirement is necessary so that the proposed rule change can become effective on the same date that SR-NASD-2005-087 becomes effective. As noted above, it is currently anticipated that the effective date will be August 1, 2006. The Commission believes that waiving the 30-day pre-operative delay and the five-day pre-filing notice requirement is consistent with the protection of investors and the public interest because it will maintain the status quo for NASD members while they revise their systems. For the reasons stated above, the Commission designates the proposal to become effective and operative on the same date that SR-NASD-2005-087 becomes effective, currently anticipated to be August 1, 2006.¹¹

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.¹²

⁸ 17 CFR 240.19b-4(f)(6).

⁹ 17 CFR 240.19b-4(f)(6)(iii).

¹⁰ *Id.*

¹¹ For purposes only of accelerating the operative date of this proposal, the Commission has considered the impact of the proposed rule on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹² For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposal, the Commission considers the period to commence on July 21, 2006, the date on which the Exchange submitted this filing.

⁵ *Id.*

⁶ NASD contemplates that when the transitional period expires on November 3, 2006, this

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASD-2006-089 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-NASD-2006-089. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASD-2006-089 and should be submitted on or before August 21, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6-12176 Filed 7-28-06; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54194; File No. SR-NSX-2006-10]

Self-Regulatory Organizations; National Stock Exchange; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a New Chapter XVI of the NSX Rules Relating to Dues, Fees, Assessments, Charges, and Market Data Rebate Programs

July 24, 2006.

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 July 13, 2006, National Stock Exchange ("NSX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by NSX. NSX filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders it effective upon filing with the Commission.⁵ 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

NSX proposes to adopt Chapter XVI of its Rules relating to dues, fees, assessments, charges and market data revenue sharing programs. The text of the proposed rule change is available at the Commission, at NSX, and at www.nsx.com.

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

In its filing with the Commission, NSX 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. NSX 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

NSX Rule 11.10 currently sets forth the Exchange's fees, dues and rebate programs. NSX proposes to remove the language in NSX Rule 11.10 concerning fees, dues and rebate programs in connection with the Exchange's proposed changes to Chapter XI of its Rules, which are part of a separate proposed rule change.⁶ The Exchange proposes to adopt Chapter XVI relating to fees, dues and rebate programs. Chapter XVI will replace current NSX Rule 11.10 when the Exchange's proposed changes to Chapter XI of its Rules become effective.

Proposed NSX Rule 16.1(a) authorizes the Exchange to prescribe such reasonable dues, fees, assessments or other charges as it may, in its discretion, deem appropriate. Such dues, fees, assessments and charges may include ETP Holder dues, transaction fees, communication and technology fees, regulatory charges, listing fees, and other fees and charges as the Exchange may determine. NSX Rule 16.1 further provides that all dues, fees and charges shall be equitably allocated among ETP Holders, issuers and other persons using the Exchange's facilities.

Proposed NSX Rule 16.1(b) provides for a regulatory transaction fee pursuant to Section 31 of the Act.⁷ This proposed Rule is identical to current Exchange Rule 11.10(q).

Proposed NSX Rule 16.1(c) states that the Exchange will provide ETP Holders with notice of all relevant dues, fees, assessments and charges. The Exchange proposes to maintain a separate fee schedule that contains its current fees, dues and other charges, instead of including all of its specific fees, dues and charges in the text of its Rules (as it currently does with NSX Rule 11.10). The Exchange notes that this approach is consistent with the approach taken by other national securities exchanges.⁸

⁶ See SR-NSX-2006-08.

⁷ 15 U.S.C. 78ee.

⁸ See, e.g., Chicago Stock Exchange, Article XIV, Rules 1, 2 and 7; NYSE Arca Equities Rule 3.7.

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ NSX provided the Commission with written notice of its intent to file the proposed rule change on June 29, 2006. See Section 19(b)(3)(A) of the Act, and Rule 19b-4(f)(6)(iii) thereunder. 15 U.S.C. 78s(b)(3)(A), 17 CFR 240.19b-4(f)(6)(iii).