of filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that NASD has given the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.[23]

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

IV. Solicitation of Comments

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

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASD–2007–014 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–2007–014. 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 the 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–2007–014 and should be submitted on or before March 26, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–3744 Filed 3–2–07; 8:45 am]

BILLING CODE 8010–01–P

[23] NASD has satisfied the five-day pre-filing requirement.

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55351; File No. SR–NASD–2005–146]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Amendment No. 3 to and Order Granting Accelerated Approval of a Proposed Rule Change as Modified by Amendment Nos. 2 and 3 Thereto To Expand the Scope of IM–2110–2 Relating To Trading Ahead of Customer Limit Orders To Apply to All OTC Equity Securities

February 26, 2007.

I. Introduction

On December 9, 2005, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to expand the scope of NASD Interpretive Material (''IM'') 2110–2, Trading Ahead of Customer Limit Order (''IM–2110–2'', which is commonly referred to as the ''Manning Rule''), and any interpretive guidance thereunder, to include over-the-counter (''OTC'') equity securities.[3] On September 26, 2006, NASD filed Amendment No. 1 to the proposed rule change, and on October 19, 2006, NASD filed Amendment No. 2 to the proposed rule change.[4] The proposed rule change, as amended, was published for comment in the **Federal Register** on November 9, 2006.[5] The Commission received one comment letter on the proposal, which supported the proposal.[6] On February 6, 2007, the Exchange filed Amendment No. 3 to the proposed rule change.[7] This order provides notice of Amendment No. 3 to the proposed rule change and approves the proposed rule change as modified by Amendment Nos. 2 and 3 on an accelerated basis.

II. Description of the Proposal

NASD's Manning Rule generally prohibits an NASD 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 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.''[8] IM–2110–2 currently applies to exchange-listed securities,[9] but does not apply to OTC equity securities.

NASD Rule 6541 extends the general principles of the Manning Rule to a subset of OTC equity securities—specifically, those equity securities that are quoted on NASD's OTC Bulletin Board (''OTCBB''). NASD Rule 6541, however, differs from IM–2110–2 in

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

[2] 17 CFR 240.19b–4.

[3] *See* NASD Rule 6610(d) (defining ''OTC Equity Security'').

[4] Amendment No. 1 replaced and superseded the original filing in its entirety and Amendment No. 2 replaced and superseded Amendment No. 1 in its entirety.

[5] *See* Securities Exchange Act Release No. 54705 (November 3, 2006), 71 FR 65863 (''Notice'').

[6] *See* Letter from Shane E. Swanson, Director of Compliance, Automated Trading Desk, LLC, to Nancy M. Morris, Secretary, Commission, dated December 29, 2006. Although this letter was not submitted in response to SR–NASD–2005–146, the letter referred to the instant filing and expressed support for NASD's proposal to require the lesser of $0.01 or ½ the spread of price improvement with respect to the implementation of Manning Rule protection to orders priced below $1.00.

[7] The text of Amendment No. 3 is available at NASD, the Commission's Public Reference Room, and *http://www.nasd.com.*

[8] *See* NASD Rule 2110.

[9] *See* Securities Exchange Act Release No. 52210 (August 4, 2005), 70 FR 46897 (August 11, 2005) (SR–NASD–2004–089) (approving the expansion of IM–2110–2, which previously applied only to Nasdaq securities, to exchange-listed securities). *See also* NASD Notice to Members 05–64 (October 2005) (announcing Commission approval of the amendments to IM–2110–2, which became effective on January 2, 2006).

several respects.[10] For example, while IM–2110–2 and NASD Rule 6541 both 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, the two rules differ in how they define ''contemporaneous.'' [11] Other differences include the fact that NASD Rule 6541 applies a lower threshold requirement on the value of large-size limit orders for which a member can negotiate specific terms and conditions applicable to the acceptance of such orders [12] and IM–2110–2 excludes marketable limit orders, whereas NASD Rule 6541 provides no such exclusion. In addition, IM–2110–2 generally is applicable from 9:30 a.m. to 6:30 p.m. Eastern Time, whereas NASD Rule 6541 applies only from 9:30 a.m. to 4 p.m. Eastern Time. IM–2110–2 and NASD Rule 6541 also differ in the minimum level of price-improvement that a member must provide to trade ahead of an unexecuted customer limit order;[13] and NASD Rule 6541 does not require, as IM–2110–2 does, that a member that has traded ahead of a customer limit order at a price that is more favorable than the customer limit order price pass along that price improvement to the customer limit order.[14]

In support of its proposal, NASD stated its belief that the distinctions in application between NASD Rule 6541 and IM–2110–2 no longer make sense, and that customer limit orders in OTC equity securities and NMS stocks should be subject to the same order handling and customer protection requirements under the Manning Rule.[15] Accordingly, NASD proposes to expand the scope of IM–2110–2 and any interpretive guidance thereunder to include all OTC equity securities.[16] In addition, NASD proposes to adopt new standards relating to 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. Specifically, 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, and 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 (½) of the current inside spread. Subsequently, in light of the proposed expansion of IM–2110–2 to cover OTC equity securities, NASD proposes to repeal NASD Rule 6541.

NASD also proposes to delete the obsolete provisions in IM–2110–2 that prescribe the minimum level of price-improvement for securities trading in non-decimalized fractions since equity securities no longer trade in fractions. In addition, NASD proposes to delete obsolete references in IM–2110–2, which limit portions of the Manning Rule's applicability to Nasdaq-listed securities. Finally, given that the definition of ''NMS stock'' in Rule 600(b)(47) of Regulation NMS [17] substantially covers all stocks listed on a national securities exchange, the proposal would replace references to the term ''exchange-listed security'' in IM–2110–2 with the term ''NMS stock.''

The proposal would be subject to delayed effectiveness. In particular, as proposed in the Notice, NASD would 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 of this proposal. In recognition of the technological and systems changes the proposed rule change may require, NASD has noted that it will set the effective date of the amendments contained in this proposed rule change at 90 days following publication of the *Notice to Members* announcing Commission approval of this filing.

III. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule change and the comment letter and finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities association, including the provisions of Section 15A(b)(6) of the Act,[18] which requires, among other things, that NASD rules be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing transactions in securities, and, in general, to protect investors and the public interest.[19]

Currently, IM–2110–2 prohibits an NASD 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. NASD Rule 6541 extends the general principles of IM–2110–2 to those OTC equity securities that are quoted on the OTCBB. As discussed above, NASD Rule 6541, however, differs from IM–2110–2 in several respects, including the applicable trading hours, time limits for ''contemporaneous'' executions, and the threshold for individually-negotiable large-size orders. NASD's proposal would revise IM–2110–2 to include OTC equity securities. The Commission believes that NASD's proposal to apply the Manning Rule's limit order protection requirements uniformly to NMS stocks and OTC equity securities is appropriate and should benefit customers who submit limit orders for OTC equity securities.

NASD also proposes to amend the provisions relating to the amount of price-improvement necessary in order

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[10] *See* Notice, *supra* note 5 (for a detailed discussion of the differences between NASD Rule 6541 and IM–2110–2).

[11] 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. *See* NASD Notices to Members 95–67 (August 1995) and 98–78 (September 1998). In contrast, NASD Rule 6541(d) provides that the contemporaneous execution should occur as soon as practicable, but in no event more than five minutes after the member has traded at a price superior to the held customer limit order. *See* NASD Notice to Members 01–46 (July 2001).

[12] Specifically, NASD 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.

[13] 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 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 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, NASD Rule 6541 provides that if the customer limit order is priced at or inside the current inside market, the price improvement is a minimum of the lesser of $0.01 or one-half (½) of the current inside spread.

[14] *See* Securities Exchange Act Release No. 52210 (August 4, 2005), 70 FR 46897 (August 11, 2005) (SR–NASD–2004–089). *See also* NASD Notice to Members 05–64 (October 2005).

[15] *See* Notice, *supra* note 5, at 71 FR 65865.

[16] NASD states that the term ''OTC equity securities'' does not include options. *See* NASD Rule 6610(d) (defining OTC equity security as any non-exchange-listed security and certain exchange-listed securities that do not otherwise qualify for real-time trade reporting).

[17] 17 CFR 242.600(b)(47).

[18] 15 U.S.C. 78*o*–3(b)(6).

[19] In approving this proposed rule change, as amended, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

for a member to execute an incoming order on a proprietary basis when holding an unexecuted customer limit order in that same security. The proposal would revise and make uniform the minimum price-improvement standards for all NMS stocks and OTC equity securities.[20] With respect to the minimum level of price-improvement that a member must provide in order to trade ahead of an unexecuted customer limit order,[21] NASD proposes that, for customer limit orders priced greater than or equal to $1.00 that are at or inside the 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 inside market, the minimum amount of price improvement required would be the lesser of $0.01 or one-half (½) of the current inside spread. For customer limit orders priced outside the inside market, the member would be required to execute the incoming order at a price at or inside the 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. The Commission believes that the proposed uniform price improvement standards are appropriate and reasonably designed to protect customer limit orders in both NMS stocks and OTC equity securities. The Commission also believes that the proposal is reasonably designed to remove obsolete references to price improvement standards in non-decimalized fractions, as well as references to portions of the Manning Rule that were formerly applicable only to securities quoted on Nasdaq.

For the reasons described above, the Commission believes that NASD's proposed rule change promotes the protection of investors and the public interest by expanding the scope of IM–2110–2 to apply to NMS stocks and OTC equity securities. Further, in expanding the application of Manning obligations under IM–2110–2 to include OTC equity securities and establishing uniform standards for both NMS stocks and OTC equity securities, the Commission believes that the proposal will enhance the opportunity for investors to receive superior-priced limit order executions in OTC equity securities.

NASD has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of Amendment No. 3 in the **Federal Register**. In Amendment No. 3, NASD requested that the Commission grant permanent approval of the price-improvement standards for decimalized securities contained in IM–2110–2 that currently apply on a pilot basis.[22] The Commission notes that the proposal, as modified by Amendment No. 2, was published for notice and comment,[23] and that the Commission received one comment letter in support of the proposal.[24] Amendment No. 3 simply seeks to clarify the status of the provision of IM–2110–2 concerning price improvement standards for decimalized securities, which is proposed to be amended as part of the instant proposed rule change. The Commission believes that permanent approval of the pilot is appropriate because the minimum price improvement standards, including the revisions contained in the instant proposed rule change, are reasonably designed to protect customer limit orders in both NMS stocks and OTC equity securities. In addition, the Commission does not believe that Amendment No. 3 raises any new or novel issues. Based on the above, the Commission finds good cause to accelerate approval of the proposed rule change, as modified by Amendment Nos. 2 and 3.

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–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 the 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 March 26, 2007.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[25] that the proposed rule change (SR–NASD–2005–146), as modified by Amendment Nos. 2 and 3, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[26]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E7–3748 Filed 3–2–07; 8:45 am]

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[20] NASD also proposes to delete the provisions in IM–2110–2 that prescribe the minimum level of price-improvement for securities trading in non-decimalized fractions since equity securities no longer trade in fractions. In addition, NASD proposes to delete references in IM–2110–2, which limit portions of the Manning Rule's applicability to Nasdaq-listed securities.

[21] The Manning Rule provides 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.

[22] *See* Securities Exchange Act Release No. 44165 (April 6, 2001), 66 FR 19268 (April 13, 2001) (SR–NASD–2001–27). *See also* Securities Exchange Act Release No. 54953 (December 18, 2006), 71 FR 77429 (December 26, 2006) (SR–NASD–2006–134) (extending the pilot until June 30, 2007).

[23] *See* Notice, *supra* note 5.

[24] *See supra* note 6 (citing to the comment letter).

[25] 15 U.S.C. 78s(b)(2).

[26] 17 CFR 200.30–3(a)(12).