

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-54256; File No. SR-NASD-2006-087)

August 1, 2006

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to NASD Rule 5110 and Certain Other NASD Rules Amended Pursuant to SR-NASD-2005-087

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 20, 2006, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD filed the proposed rules change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposed rule change effective upon filing with the Commission. NASD proposes to make the proposed rule change operative on the date on which the Nasdaq Stock Market LLC ("Nasdaq Exchange") commences operation as a national securities exchange for Nasdaq-listed securities.<sup>5</sup> 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

The NASD proposes to (1) amend NASD Rule 5110 to clarify that the rule is applicable to both Nasdaq and non-Nasdaq exchange-listed securities; and (2) make

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>5</sup> These securities will not include approximately 40 securities that are dually-listed on the New York Stock Exchange.

technical, non-substantive changes to certain other NASD rules that were amended by proposed rule change SR-NASD-2005-087.<sup>6</sup> Rule 5110 and the other amendments to NASD rules proposed by SR-NASD-2005-087 will become effective on the date upon which the Nasdaq Exchange operates as a national securities exchange for Nasdaq-listed securities. Currently, that date is projected to be August 1, 2006. The text of the proposed rule change is available on the NASD's Web site (<http://www.nasdaq.com>), at NASD's principal office, at the Commission's Public Reference Room.

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

In its filing with the Commission, the 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. The 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

On June 30, 2006, the Commission approved SR-NASD-2005-087.<sup>7</sup> Among other things, in SR-NASD-2005-087, the NASD proposed (1) amendments to the NASD Delegation Plan, NASD By-Laws and NASD rules to reflect a proposed phased

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<sup>6</sup> The NASD filed SR-NASD-2005-087 on July 11, 2005 and Amendment No. 1 on June 15, 2006. The Commission approved SR-NASD-2005-087, as amended, on June 30, 2006. See Securities Exchange Act Release No. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006) ("June 30 Approval Order").

<sup>7</sup> Id.

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. The NASD is filing this proposed rule change in anticipation of SR-NASD-2005-087 becoming effective to (1) amend Rule 5110 to clarify that the rule is applicable to both Nasdaq and non-Nasdaq exchange-listed securities; and (2) make technical, non-substantive changes to certain other NASD rules that were amended by SR-NASD-2005-087.

#### Amendments to Rule 5110

Pursuant to SR-NASD-2005-087, NASD proposed to renumber Rule 6440(i) as Rule 5110 and extend its application to Nasdaq exchange-listed securities. Currently, the rule prohibits members from executing, otherwise than on an exchange, a transaction in a security subject to an initial public offering until such security has first opened for trading on the national securities exchange listing the security, as indicated by the dissemination of an opening transaction in the security by the listing exchange via the Consolidated Tape.

As described in footnote 23 of the June 30 Approval Order, the NASD is proposing to amend Rule 5110 to delete the reference to dissemination of the opening transaction “via the Consolidated Tape.” Pursuant to SR-NASD-2005-087, Rule 5110 is intended to apply to both Nasdaq and non-Nasdaq exchange-listed securities. As such, the reference in the rule to the Consolidated Tape is too narrow given that transactions in securities listed on the Nasdaq Exchange are reported to the Nasdaq Unlisted Trading

Privileges Plan.

Technical, Non-Substantive Amendments

NASD is proposing a number of grammatical and technical, non-substantive changes to certain NASD rules that were amended by SR-NASD-2005-087.

Rules 4120A, 4633 and 6431 give NASD authority to halt trading on the ADF and trading reported to the Trade Reporting Facility, with respect to Nasdaq-listed securities, and trading otherwise than on an exchange with respect to non-Nasdaq exchange-listed securities, respectively. These rules are intended to be consistent in their language and application. Accordingly, NASD is proposing to amend Rule 4633(a)(2)(C)(i) and (ii) and Rule 6431(a)(2)(C)(i) and (ii) by replacing the word “believes” with the word “determines.” The proposed change would conform the language of these rules to the language of Rule 4120A(a)(2)(C)(i) and (ii).<sup>8</sup>

NASD is also proposing to amend Rule 4633 to change references to trading halts “on” or “in” the Trade Reporting Facility to “reported to” the Trade Reporting Facility, to clarify that trades are not executed on the Trade Reporting Facility.

In addition, SR-NASD-2005-087 inadvertently renumbered subparagraphs (MM) through (PP) of Rule 2860(b)(2) as (KK) through (OO). These subparagraphs should have been renumbered (KK) through (NN). As a result, there currently is no

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<sup>8</sup> Specifically, each rule grants NASD authority to halt trades in a particular security, including in the event of extraordinary market activity in the security. Rule 4120A(a)(2)(C)(i) and (ii) provides that NASD may exercise this authority if it “determines” that such activity is caused by the misuse or malfunction of a system operated by or linked to NASD or a national securities exchange. In otherwise identical provisions, Rule 4633(a)(2)(C)(i) and (ii) and Rule 6431(a)(2)(C)(i) and (ii) use the word “believes” instead of “determines.”

subparagraph (OO). Therefore, the proposed rule change would renumber the rule's subparagraphs (PP) through (AAA) as (OO) through (ZZ).

Finally, several rule changes that were approved by the Commission and implemented subsequent to the filing of Amendment No. 1 to SR-NASD-2005-087 change the underlying or proposed text provided in Exhibit 5 of SR-NASD-2005-087. As a result, NASD is proposing changes to the rule text approved pursuant to SR-NASD-2005-087 to make it consistent with the other recently approved rule changes. These include the following rule changes along with the rules affected: SR-NASD-2000-023 amended Rules 6951 and 6954; SR-NASD-2005-098 amended Rule 6740 (renumbered as Rule 6640 pursuant to SR-NASD-2005-087); SR-NASD-2006-040 amended Rule 9610; and SR-NASD-2006-080 amended Rule 4901. In addition, the "Nasdaq National Market" was recently renamed the "Nasdaq Global Market," and pursuant to SR-NASD-2006-068, a number of rules were amended to change "Nasdaq National Market," "NNM" or "Nasdaq National Market securities" to "Nasdaq Global Market," "NGM" or "Nasdaq Global Market securities," respectively.

## 2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>9</sup> 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 relating to Rule 5110 will result in uniform

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<sup>9</sup> 15 U.S.C. 78o-3(b)(6).

regulation of securities that are subject to an initial public offering. In addition, NASD believes that the proposed rule change will enhance the integrity of the market by increasing the consistency and clarity of its rules.

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, as amended.

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

Written comments were neither solicited nor received.

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

Because the foregoing proposed rule change does not:

(i) significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act,<sup>10</sup> and Rule 19b-4(f)(6) thereunder.<sup>11</sup> 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

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<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

A proposed rule change filed under Rule 19b-4(f)(6)<sup>12</sup> normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii),<sup>13</sup> the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The NASD has asked the Commission to waive the 30-day pre-operative delay. The Commission believes that such waiver is consistent with the protection of investors and the public interest because it would allow the NASD to update and clarify its rules.<sup>14</sup> For this reason, the Commission designates the proposed rule change to be operative on the date that the Nasdaq Exchange begins operations as a national securities exchange for Nasdaq-listed securities.<sup>15</sup>

#### 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:

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<sup>12</sup> 17 CFR 240.19b-4(f)(6).

<sup>13</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>14</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>15</sup> As noted above, the Nasdaq Exchange is currently scheduled to commence operating as a national securities exchange with respect to Nasdaq-listed securities on August 1, 2006.

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](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2006-087 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-2006-087. 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 the 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-2006-087 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.<sup>16</sup>

Nancy M. Morris  
Secretary

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<sup>16</sup> 17 CFR 200.30-3(a)(12).