

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-56103; File No. SR-NASD-2007-039)

July 19, 2007

Self-Regulatory Organizations: National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Delay Implementation of Certain Changes to the Manning Rule

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 June 20, 2007, 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 substantially prepared by NASD. NASD filed the proposed rule 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 it effective upon filing with the Commission. 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 delay implementation of certain NASD rule changes approved in SR-NASD-2005-146 until November 26, 2007.<sup>5</sup> There are no new changes to the text of NASD rules. The text of the proposed rule change is available at NASD, [www.nasd.com](http://www.nasd.com), and the Commission’s Public Reference Room.

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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> See Securities Exchange Act Release No. 55351 (February 26, 2007), 72 FR 9810 (March 5, 2007) (order approving SR-NASD-2005-146).

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

On February 26, 2007, the Commission approved SR-NASD-2005-146, which, among other clarifying and conforming changes, proposed amendments to NASD IM-2110-2<sup>6</sup> to (1) expand the scope to apply to OTC Equity Securities;<sup>7</sup> (2) modify the minimum price-improvement standards for securities trading in decimals; (3) adopt on a permanent basis the pilot price-improvement standards for securities trading in decimals; and (4) delete certain unnecessary text relating to the minimum price-improvement required for securities trading in fractions. On April 27, 2007, NASD published Notice to Members 07-19, which announced the Commission's approval of SR-NASD-2005-146

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<sup>6</sup> Currently, NASD IM-2110-2 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. As part of SR-NASD-2005-146, NASD replaced the term "exchange-listed security" with the term "NMS stock," which is defined as any NMS security other than an option. See Rule 600(b)(47) of Regulation NMS. Although the replacement of the term would not become effective until the November 26, 2007 final implementation date, as stated in SR-NASD-2005-146, NASD IM-2110-2 does not apply to options.

<sup>7</sup> See NASD Rule 6610(d) (definition of "OTC Equity Security").

and established July 26, 2007 as the effective date of the rule changes in SR-NASD-2005-146.<sup>8</sup>

Following Commission approval of SR-NASD-2005-146 and the publication of the Notice to Members, several firms have requested that the effective date of the approved rule changes be delayed to allow firms additional time to make necessary systems changes in light of other competing technological demands required by implementation of Regulation NMS. In addition, some broker-dealers raised concerns regarding the application of the approved minimum price-improvement standards. NASD staff is currently revisiting the amended price-improvement standards in light of these concerns. If, based on this review, NASD concludes that further rulemaking is warranted, NASD will file a separate rule change with the Commission.

Therefore, to provide adequate time to firms to make technological changes given competing technological demands from Regulation NMS, and to consider and potentially act upon the concerns regarding the minimum price-improvement standards, NASD is proposing that the effective date of certain NASD rule changes approved in SR-NASD-2005-146 as described herein be delayed until November 26, 2007. Specifically, NASD is proposing to delay the approved rule changes in SR-NASD-2005-146 that relate solely to the expansion of the scope of NASD IM-2110-2 to OTC Equity Securities and the related deletion of NASD Rule 6541. Accordingly, the requirements in NASD Rule 6541 would continue to apply to OTCBB securities until NASD IM-2110-2 is implemented for OTC Equity Securities.

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<sup>8</sup> See NASD Notice to Members 07-19 (April 2007) (announcing the effective date of the rule changes in SR-NASD-2005-146).

In addition, the amendments in SR-NASD-2005-146 also make changes to the minimum price-improvement standards in NASD IM-2110-2, which, as approved, would apply uniformly to both OTC Equity Securities and NMS stocks. NASD is delaying these changes as well, with one exception: for customer limit orders in exchange-listed securities 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. This provision will go into effect on July 26, 2007, as currently scheduled.

All other changes unrelated to the expansion to OTC Equity Securities, including the deletion of certain unnecessary text relating to the minimum price-improvement required for securities trading in fractions and the adoption on a permanent basis of the pilot price-improvement standards for securities trading in decimals that were approved pursuant to SR-NASD-2005-146 will become effective as scheduled on July 26, 2007.

NASD has filed the proposed rule change for immediate effectiveness. NASD proposes to implement the proposed rule change as described herein.

## 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 will improve the treatment of customer limit orders and promote investor protection

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

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

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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).

In accordance with Rule 19b-4,<sup>12</sup> NASD submitted written 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.

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2007-039 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-2007-039. 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

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<sup>12</sup> 17 CFR 240.19b-4.

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, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. 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-2007-039 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>13</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>13</sup> 17 CFR 200.30-3(a)(12).