

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50158; File No. SR-NASD-2004-117)

August 5, 2004

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Extending the Operative Date for the Short-Sale ACT Reporting Requirements for Certain 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 August 2, 2004, the National Association of Securities Dealers, Inc. (“NASD” or “Association”), through its subsidiary, The Nasdaq Stock Market, Inc. (“Nasdaq”), 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 Nasdaq. Nasdaq has filed this proposed rule change pursuant to Section 19(b)(3)(A)(i) of the Act³ and Rule 19b-4(f)(1) thereunder,⁴ which renders the proposal 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

Nasdaq proposes to extend, for certain securities, the operative date of NASD IM-6130 (“Trade Reporting of Short Sales”) regarding members’ obligations to indicate on their transaction reports whether a sale is a short sale or a short sale exempt transaction. Specifically, Nasdaq proposes to extend the operative date to September 26, 2004, with respect to securities eligible to be quoted on the Over the Counter Bulletin Board (“OTCBB”) or other non-Nasdaq

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(6).

equity securities. No changes to the text of the NASD rules are required by this proposed rule 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, Nasdaq 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. Nasdaq 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 May 20, 2004, Nasdaq filed a proposed rule change that established NASD IM-6130 regarding members' obligations to indicate on their transaction reports whether a transaction was a short sale or short exempt.⁵ That proposed rule change was immediately effective, but Nasdaq delayed its operative date for sixty days, until July 26, 2004, to allow members adequate time to comply with their obligations.

Based upon feedback received in a comment letter⁶ and from the staff of the Division of Market Regulation of the Commission, Nasdaq has determined to extend the operative date for NASD IM-6130 for an additional sixty days with respect to certain stocks. Specifically, a commenter stated that it will be unable to comply with its obligations under NASD IM-6130 with respect to securities eligible to be quoted on the OTCBB or in other non-Nasdaq equity

⁵ See Securities Exchange Act Release No. 49833 (June 8, 2004) 69 FR 33969 (June 17, 2004).

securities.⁷ In response to such comments, Nasdaq proposes to allow firms, with respect to OTCBB and non-Nasdaq equity securities, an additional 60-day period to re-program their systems in order to comply with NASD IM-6130. Therefore, the operative date for compliance with NASD IM-6130 will remain July 26, 2004 for all Nasdaq National Market, SmallCap, and exchange-listed securities and the operative date for OTCBB and non-Nasdaq equity securities will be extended to September 24, 2004.

NASD will publish a Notice to Members announcing the new operative date for compliance with NASD IM-6130 for OTCBB and non-Nasdaq securities.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,⁸ in general and with Section 15A(b)(6) of the Act,⁹ in particular, in that it is 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. Nasdaq believes the proposed rule change is consistent with the Act in that it clarifies short sale reporting requirements and promotes compliance with and regulation of short sale requirements.

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

Nasdaq 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.

⁶ Letter from R. Cromwell Coulson, Chief Executive Officer, Pink Sheets LLC, to Jonathan G. Katz, Secretary, Commission, dated June 24, 2004 ("Pink Sheets Letter").

⁷ Id.

⁸ 15 U.S.C. 78o-3.

⁹ 15 U.S.C. 78o-3(b)(6).

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act,¹⁰ and Rule 19b-4(f)(1) thereunder,¹¹ because it constitutes a stated practice with respect to the enforcement of an existing NASD rule.

At any time within 60 days of the filing of the proposed rule change, pursuant to Section 19(b)(3)(A) of the Act,¹² the Commission may summarily abrogate the proposed 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 proposed rule change. 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-2004-117 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

¹⁰ 15 U.S.C. 78s(b)(3)(A)(i).

¹¹ 17 CFR 240.19b-4(f)(1).

¹² 15 U.S.C. 78s(b)(3)(A).

All submissions should refer to File Number SR-NASD-2004-117. 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-2004-117 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.¹³

Margaret H. McFarland
Deputy Secretary

¹³ 17 CFR 200.30-3(a)(12).