

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- 51953; File No. SR-NASD-2005-085)

June 30, 2005

Self Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Pilot Relating to Manning Price-Improvement Standards for Decimals

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 June 29, 2005, 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 and II below, which Items have been prepared by NASD. NASD has filed this proposal pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) 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

NASD is proposing to extend through December 31, 2005, the current pilot price-improvement standards for decimalized securities contained in NASD Interpretive Material 2110-2 - Trading Ahead of Customer Limit Order (“Manning Interpretation” or “Manning”). There are no proposed changes to the rule text of the Manning Interpretation.

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).

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 III 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

NASD's Manning Interpretation requires an NASD member firm to provide a minimum level of price improvement to an incoming order in a Nasdaq National Market or SmallCap security if the firm chooses to trade as principal with an incoming order at a price superior to that of the customer limit order that it currently holds. If the firm fails to provide the minimum level of price improvement to the incoming order, the firm must execute the held customer limit order. Generally, if a firm fails to provide the requisite amount of price improvement and also fails to execute the held customer limit order, it is in violation of the Manning Interpretation. The Commission originally approved, on a pilot basis, price-improvement standards for decimalized securities contained in the Manning Interpretation on April 6, 2001.⁵ At that time, NASD added the following language to IM-2110-2:

⁵ See Securities Exchange Act Release No. 44165 (April 6, 2001), 66 FR 19268 (April 13, 2001).

For Nasdaq securities authorized for trading in decimals pursuant to the Decimals Implementation Plan For the Equities and Options Markets, the minimum amount of price improvement necessary in order for a market maker to execute an incoming order on a proprietary basis in a security trading in decimals when holding an unexecuted limit order in that same security, and not be required to execute the held limit order, is as follows:

- 1) For customer limit orders priced at or inside the best inside market displayed in Nasdaq, the minimum amount of price improvement required is \$0.01; and
- 2) For customer limit orders priced outside the best inside market displayed in Nasdaq, the market maker must price improve the incoming order by executing the incoming order at a price at least equal to the next superior minimum quotation increment in Nasdaq (currently \$0.01).⁶

Since approval, these standards continue to operate on a pilot basis which terminates on June 30, 2005.⁷ NASD has determined to seek an extension of its current pilot until December 31, 2005. NASD believes that such an extension provides for an appropriate continuation of the current Manning price-improvement standard while the

⁶ Pursuant to the terms of the Decimals Implementation Plan for the Equities and Options Markets, the minimum quotation increment for Nasdaq securities (both National Market and SmallCap) at the outset of decimal pricing is \$0.01. As such, Nasdaq displays priced quotations to two places beyond the decimal point (to the penny). Quotations submitted to Nasdaq that do not meet this standard are rounded to the nearest minimum quotation increment (namely, \$0.01), specifically, rounded down for buy orders and rounded up for sell orders. See Securities Exchange Act Release No. 43876 (January 23, 2001), 66 FR 8251 (January 30, 2001) (SR-NASD-01-07).

⁷ See Securities Exchange Act Release No. 50893 (December 20, 2004), 69 FR 78078 (December 29, 2004).

Commission continues to analyze the issues related to customer limit order protection in a decimalized environment. NASD is not proposing any other changes to the pilot at this time.

2. Statutory Basis

NASD 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, which require, among other things, that NASD rules must 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 treatment of customer limit orders and enhance the integrity of the market.

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.

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

NASD asserts that the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁰ and Rule 19b-4(f)(6) thereunder¹¹ because the rule

⁸ 15 U.S.C. 78o-3.

⁹ 15 U.S.C. 78o-3(b)(6).

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

change does not:

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

(ii) impose any significant burden on competition; nor

(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.¹² NASD has requested that the Commission waive the 30-day operative delay and designate the proposed rule change effective immediately so that the pilot can continue uninterrupted.

The Commission hereby grants the request.¹³ The Commission believes that such waiver is consistent with the protection of investors and the public interest because it will allow the protection of customer limit orders provided by the pilot to continue without interruption and designates the proposed rule change to be operative upon filing with the Commission.

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 In addition, Rule 19b-4(f)(6)(iii) states that NASD must provide the Commission with written notice of its intent to file the proposed rule change at least five days prior to the date of filing of the proposed rule change. NASD satisfied this requirement.

¹³ For purposes only of accelerating the operative date of the proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

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- 2005-085 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-NASD-2005-085. 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 at the principal office of NASD and at the Commission's Public Reference Room. 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 the File Number SR-NASD-2005-085 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.¹⁴

Margaret H. McFarland
Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(12).