

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-56867; File No. SR-NASDAQ-2007-065)

November 29, 2007

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Conform SRO Rules to Changes to Rule 10a-1 and Regulation SHO

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 July 11, 2007, The NASDAQ Stock Market LLC (“Nasdaq”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been substantially prepared by Nasdaq. Nasdaq has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b-4(f)(6) under the Act,³ 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 a rule change to eliminate Nasdaq Rule 3350 and IM-3350 and to make conforming changes to other Nasdaq rules, as required by recent Commission rulemaking.

The text of the proposed rule change is below. Proposed new language is underlined; proposed deletions are in brackets.

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

2 17 CFR 240.19b-4.

3 17 C.F.R. 240.19b-4(f)(6).

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3350. Reserved. [Short Sale Rule]

(a) With respect to trades executed on Nasdaq, no member shall effect a short sale for the account of a customer or for its own account in a Nasdaq Global Market security at or below the current best (inside) bid displayed in the National Market System when the current best (inside) bid is below the preceding best (inside) bid in the security. For purposes of this rule, the term "customer" includes a non-member broker-dealer.

(b) In determining the price at which a short sale may be effected after a security goes ex-dividend, ex-right, or ex-any other distribution, all quotation prices prior to the "ex" date may be reduced by the value of such distribution.

(c) The provisions of paragraph (a) shall not apply to:

(1) Sales by a registered market maker registered in the security on Nasdaq in connection with bona fide market making activity. For purposes of this paragraph, transactions unrelated to normal market making activity, such as index arbitrage and risk arbitrage that are independent from a member's market making functions, will not be considered bona fide market-making activity.

(2) Any sale by any person, for an account in which he has an interest, if such person owns the security sold and intends to deliver such security as soon as possible without undue inconvenience or expense.

(3) Sales by a member, for an account in which the member has no interest, pursuant to an order to sell which is marked "long".

(4) Sales by a member to offset odd-lot orders of customers.

(5) Sales by a member to liquidate a long position which is less than a round lot, provided that such sale does not change the position of the member by more than one unit of trading.

(6) Sales by a person of a security for a special arbitrage account if the person then owns another security by virtue of which the person is, or presently will be, entitled to acquire an equivalent number of securities of the same class of securities sold; provided such sale, or the purchase which such sale offsets, is effected for the bona fide purpose of profiting from a current difference between the price of the security sold and the security owned and that such right of acquisition was originally attached to or represented by another security or was issued to all the holders of any such class of securities of the issuer.

(7) Sales by a person of a security effected for a special international arbitrage account for the bona fide purpose of profiting from a current difference between the price of such security on a securities market not within or subject to the jurisdiction of the United States and on such a securities market subject to the jurisdiction of the United States; provided the person at the time of such sale knows or, by virtue of information currently received, has reasonable grounds to believe that an offer enabling the person to cover such sale is then available to the person in such foreign securities market and intends to accept such offer immediately.

(8) Sales by an underwriter, or any member of a syndicate or group participating in the distribution of a security, in connection with an over-allotment

of securities, or any layoff sale by such a person in connection with a distribution of securities through rights or a standby underwriting commitment.

(9) Sales of securities as to which all short sale price tests have been suspended by operation of a Pilot Order issued by the Commission pursuant to SEC Rule 202T.

(10) Sales of securities included in the Nasdaq 100 Index.

(11) Short sales of securities in the Nasdaq Crossing Network pursuant to NASDAQ Rule 4770 provided that:

(a) Such short sales involve securities that comprise the S&P 500 Index;

(b) Such short sales involve securities that qualify as “actively-traded securities” under Regulation M; or

(c) Such short sales are part of a basket transaction of 20 or more securities in which the subject security does not comprise more than five percent of the value of the basket traded.

(d) No member shall effect a short sale for the account of a customer or for its own account indirectly or through the offices of a third party to avoid the application of this Rule.

(e) No member shall knowingly, or with reason to know, effect sales for the account of a customer or for its own account to avoid the application of this Rule.

(f) A member that is not currently registered as a Nasdaq market maker in a security and that has acquired a security while acting in the capacity of a block positioner shall be deemed to own such security for the purposes of this Rule notwithstanding that

such member may not have a net long position in such security if and to the extent that the member's short position in the security is the subject of offsetting positions created in the course of bona fide arbitrage, risk arbitrage, or bona fide hedge activities.

(g) For purposes of this Rule, a depositary receipt of a security shall be deemed to be the same security as the security represented by such receipt.

(h) (1) A member shall be permitted, consistent with its quotation obligations, to execute a short sale for the account of an options market maker that would otherwise be in contravention of this Rule, if:

(A) the options market maker is registered with a qualified options exchange as a qualified options market maker in a stock options class on a Nasdaq Global Market security or an options class on a qualified stock index; and

(B) the short sale is an exempt hedge transaction.

(2) For purposes of this paragraph:

(A) (i) An "exempt hedge transaction," in the context of qualified options market makers in stock options classes, shall mean a short sale in a Nasdaq Global Market security that was effected to hedge, and in fact serves to hedge, an existing offsetting options position or an offsetting options position that was created in a transaction(s) contemporaneous with the short sale,¹ provided that when establishing the short position the options market maker is eligible to receive(s) good faith margin pursuant to Section 220.12 of Regulation T under the Act for that transaction.

(ii) An "exempt hedge transaction," in the context of qualified options market makers in stock index options classes, shall mean a short sale in a Nasdaq Global Market security that was effected to hedge, and in fact serves to hedge, an existing offsetting stock index options position or an offsetting stock index options position that was created in a transaction(s) contemporaneous with the short sale, provided that:

- a. the security sold short is a component security of the index underlying such offsetting index options position;
- b. the index underlying such offsetting index options position is a "qualified stock index;" and
- c. the dollar value of all exempt short sales effected to hedge the offsetting stock index options position does not exceed the aggregate current index value of the offsetting options position.

(iii) Notwithstanding any other provision of this paragraph (h), any transaction unrelated to normal options market making activity, such as index arbitrage or risk arbitrage that in either case is independent of an options market maker's market making functions, will not be considered an "exempt hedge transaction."

(B) A "qualified options market maker" shall mean an options market maker who has received an appointment as a "qualified options market maker" for certain classes of stock options on Nasdaq Global Market securities and/or index options on qualified stock indexes pursuant to the rules of a qualified options exchange.

(C) A "qualified options exchange" shall mean a national securities exchange that has approved rules and procedures providing for:

(i) designating market makers as qualified options market makers, which standards shall be designed to identify options market makers who regularly engage in market making activities in the particular options class(es);

(ii) the surveillance of its market maker's utilization of the exemption set forth in paragraph (h)(1) to assure that short sales effected by qualified options market makers are exempt hedge transactions and that other non-qualified market makers are not utilizing the exemption; and

(iii) authorization of Nasdaq to withdraw, suspend or modify the designation of a qualified options market maker but only if a qualified options exchange has determined that the qualified options market maker has failed to comply with the terms of the exemption, and that such a withdrawal, suspension or modification of the market maker's exemption is warranted in light of the substantial, willful, or continuing nature of the violation.

(D) A "qualified stock index" shall mean any stock index that includes one or more Nasdaq Global Market securities, provided that more than 10% of the weight of the index is accounted for by Nasdaq Global Market securities and provided further that the qualification of an index as a qualified stock index shall be reviewed as of the end of each calendar quarter, and the index shall cease to qualify if the value of the index represented by one or more Nasdaq Global Market securities is less than 8% at the end of any subsequent calendar quarter.

(E) "Aggregate current index value" shall mean the current index value times the index multiplier.

(F) A member will not be in violation of paragraph (a) above if the member executes a short sale for the account of an options market maker that is in contravention of this paragraph (h), provided that the member did not know or have reason to know that the options market maker's short sale was in contravention of this paragraph (h).

(i) (1) A member shall be permitted, consistent with its quotation obligations, to execute a short sale for the account of a warrant market maker that would otherwise be in contravention of this Rule, if:

(A) the warrant market maker is a registered Nasdaq market maker for the warrant; and

(B) the short sale is an exempt hedge transaction that results in a fully hedged position.

(2) For purposes of this paragraph, an "exempt hedge transaction" shall mean a short sale in a Nasdaq Global Market security that was effected to hedge, and in fact serves to hedge, an existing offsetting warrant position or an offsetting warrant position that was created in a transaction(s) contemporaneous with the short sale.² Notwithstanding any other provision of this paragraph, any transaction unrelated to normal warrant market making activity, such as index arbitrage or risk arbitrage that in either case is independent of a warrant market maker's market making functions, will not be considered an "exempt hedge transaction."

(3) Nasdaq may withdraw, suspend or modify the exemption for a warrant market maker upon determination that the market maker has failed to comply with the terms of the exemption, and that such a withdrawal, suspension or modification of the market maker's exemption is warranted in light of the substantial, willful, or continuing nature of the violation.

(4) A member will not be in violation of paragraph (a) above if the member executes a short sale for the account of a warrant market maker that is in contravention of this paragraph (i), provided that the member did not know or have reason to know that the warrant market maker's short sale was in contravention of paragraph (i).

(j) Pursuant to the Rule 9600 Series or on Nasdaq's own motion, Nasdaq may exempt either unconditionally, or on specified terms and conditions, any transaction or class of transactions from the provisions of this Rule.

(k) Definitions:

(1) The term "short sale" shall have the same meaning as contained in SEC Rule 200, adopted pursuant to the Act.

(2) The term "block positioner" shall have the same meaning as contained in SEC Rule 3b-8(c) for "Qualified Block Positioner" adopted pursuant to the Act.

(l) This section shall be in effect until December 15, 2006.]

[¹ The phrase contemporaneously established includes transactions occurring simultaneously as well as transactions occurring within the same brief period of time.]

[² The phrase contemporaneously established includes transactions occurring simultaneously as well as transactions occurring within the same brief period of time.]

[IM-3350. Short Sale Rule]

[(a) (1) In developing a Short Sale Rule for Nasdaq Global Market securities, Nasdaq has adopted an exemption to the Rule for certain market making activity. This exemption is an essential component of the Rule because bona fide market making activity is necessary and appropriate to maintain continuous, liquid markets in Nasdaq Global Market securities. Rule 3350(c)(1) states that short selling prohibitions shall not apply to sales by registered Nasdaq market makers in connection with bona fide market making activity and specifies that transactions unrelated to normal market making activity, such as index arbitrage and risk arbitrage that are independent from a member's

market making functions, will not be considered as bona fide market making. Thus two standards are to be applied: one must be a registered Nasdaq market maker and one must engage in "bona fide" market making activity to take advantage of this exemption. With this interpretation, Nasdaq wishes to clarify for members some of the factors that will be taken into consideration when reviewing market making activity that may not be deemed to be bona fide market making activity and therefore would not be exempted from the Rule's application.

(2) First, as the Rule indicates, bona fide market making activity does not include activity that is unrelated to market making functions, such as index arbitrage and risk arbitrage that is independent from a member's market making functions. While these types of arbitrage activity appear to be suitable for the firm's overall hedging or risk management concerns, they do not warrant an exemption from the Rule. However, short sales of a security of a company involved in a merger or acquisition will be deemed bona fide market-making activity if made to hedge the purchase or prospective purchase (based on communicated indications of interest) of another security of a company involved in the merger or acquisition, which purchase was made, or is to be made, in the course of bona fide market making activity. The purchase of a security of a company involved in a merger or acquisition made to hedge a short sale of another security involved in the merger or acquisition, which sale was made in the course of bona fide market making activity, will not cause the sale to be deemed unrelated to normal market-making activity. Short sales made to hedge any such purchases or prospective purchases must be reasonably consistent with the exchange ratio (or exchange ratio formula) specified by the terms of the merger or acquisition.

(3) Similarly, bona fide market making would exclude activity that is related to speculative selling strategies of the member or investment decisions of the firm and is disproportionate to the usual market making patterns or practices of the member in that security. Nasdaq does not anticipate that a firm could properly take advantage of its market maker exemption to effectuate such speculative or investment short selling decisions. Disproportionate short selling in a market making account to effectuate such strategies will be viewed by Nasdaq as inappropriate activity that does not represent bona fide market making and would therefore be in violation of Rule 3350.

(b) With respect to trades executed on or reported to Nasdaq, Rule 3350 requires that no member shall effect a short sale for the account of a customer or for its own account in a Nasdaq Global Market security at or below the current best (inside) bid displayed in the Nasdaq Market Center when the current best (inside) bid is below the preceding best (inside) bid in the security. For purposes of this rule, the term "customer" includes a non-member broker-dealer. Nasdaq has determined that in order to effect a "legal" short sale when the current best bid is lower than the preceding best bid the short sale must be executed at a price of at least \$0.01 above the current inside bid when the current inside spread is \$0.01 or greater. The last sale report for such a trade would, therefore, be above the inside bid by at least \$0.01.

(c) (1) Rule 3350 prohibits a member from effecting a short sale for the account of a customer or for its own account directly or through the offices of a third party for the purpose of avoiding the application of the Short Sale Rule. Further, the Rule prohibits a member from knowingly, or with reason to know, effecting sales for the account of a customer or for its own account for the purpose of avoiding the Rule. With

this interpretation, Nasdaq wishes to clarify some of the circumstances under which a member would be deemed to be in violation of Rule 3350.

(2) For example, in instances where the current best bid is below the preceding best bid, if a market maker alone at the inside best bid were to lower its bid and then raise it to create an "up bid" for the purpose of facilitating a short sale, Nasdaq would consider such activity to be a manipulative act and a violation of Nasdaq's Short Sale Rule. Nasdaq also would consider it a manipulative act and a violation of the Rule if a market maker with a long stock position were to raise its bid above the inside bid and then lower it to create a "down bid" for the purpose of precluding market participants from selling short. In addition, if a market maker agrees to an arrangement proposed by a member or a customer whereby the market maker raises its bid in Nasdaq in order to effect a short sale for the other party and is protected against any loss on the trade or on any other executions effected at its new bid price, the market maker would be deemed to be in violation of Rule 3350. Similarly, a market maker would be deemed in violation of the Rule if it entered into an arrangement with a member or a customer whereby it used its exemption from the rule to sell short at the bid at successively lower prices, accumulating a short position, and subsequently offsetting those sales through a transaction at a prearranged price, for the purpose of avoiding compliance with the Rule, and with the understanding that the market maker would be guaranteed by the member or customer against losses on the trades.

(3) Nasdaq believes that members' activities to circumvent the Rule through indirect actions such as executions with other members or through facilitation of

customer orders while being protected from loss are antithetical to the purposes of the Rule. Accordingly, Nasdaq will consider any such activity as a violation of Rule 3350.

(d) Nasdaq calculates changes to the inside bid displayed in the Nasdaq Market Center and disseminates a "bid arrow" via Nasdaq data feeds for market participants to use to comply with Rule 3350 when utilizing the execution functionality of the Nasdaq Market Center. The initial bid arrow each day shall be calculated at market open as follows.

(1) For stocks subject to Rule 4709(c), the initial bid arrow after completing the process described in Rule 4709(c)(1) through (3) shall be up and the next and subsequent bid arrows shall be calculated by comparing the bid arrow with each quotation update processed by the Nasdaq system after the system begins processing pursuant to Rule 4709(c)(4).

(2) For stocks described in Rule 4704(d), the initial bid arrow at the conclusion of the Nasdaq Opening Cross shall be up and the next and subsequent bid arrows shall be calculated by comparing the bid arrow with each quotation update processed by the Nasdaq system after the Nasdaq Opening Cross concludes.]

3360. Short-Interest Reporting

(a) To the extent such information is not otherwise reported to the NASD in conformance with NASD Rule 3360, each member shall maintain a record of total "short" positions in all customer and proprietary firm accounts in securities listed on Nasdaq and shall regularly report such information to Nasdaq in such a manner as may be prescribed by Nasdaq. Reports shall be made as of the close of the settlement date

designated by Nasdaq. Reports shall be received by Nasdaq no later than the second business day after the reporting settlement date designated by Nasdaq.

(b) For purposes of this Rule:

(1) "short" positions to be reported are those resulting from "short sales" as that term is defined in SEC Rule 200(a) of Regulation SHO, with the exception of positions that meet the following requirements: [of Subsections (e)(1), (6), (7), (8), and (10) of SEC Rule 10a-1 adopted under the Act; and]

(A) any sale by any person, for an account in which he has an interest, if such person owns the security sold and intends to deliver such security as soon as is possible without undue inconvenience or expense;

(B) any sale of a security covered by a short sale rule on a national securities exchange (except a sale to a stabilizing bid complying with Rule 104 of Regulation M) effected with the approval of such exchange which is necessary to equalize the price of such security thereon with the current price of such security on another national securities exchange which is the principal exchange market for such security;

(C) any sale of a security for a special arbitrage account by a person who then owns another security by virtue of which he is, or presently will be, entitled to acquire an equivalent number of securities of the same class as the securities sold; provided such sale, or the purchase which such sale offsets, is effected for the bona fide purpose of profiting from a current difference between the price of the security sold and the security owned and that such right of acquisition was originally attached to or represented

by another security or was issued to all the holders of any such class of securities of the issuer;

(D) any sale of a security registered on, or admitted to unlisted trading privileges on, a national securities exchange effected for a special international arbitrage account for the bona fide purpose of profiting from a current difference between the price of such security on a securities market not within or subject to the jurisdiction of the United States and on a securities market subject to the jurisdiction of the United States; provided the seller at the time of such sale knows or, by virtue of information currently received, has reasonable grounds to believe that an offer enabling him to cover such sale is then available to him in such foreign securities market and intends to accept such offer immediately;
and

(E) any sale by an underwriter, or any member of a syndicate or group participating in the distribution of a security, in connection with an over-allotment of securities, or any lay-off sale by such a person in connection with a distribution of securities through rights or a standby underwriting commitment.

(2) No change.

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IM-4390 Impact of Non-Designation of Dually Listed Securities

To foster competition among markets and further the development of the national market system following the repeal of NYSE Rule 500, Nasdaq shall permit issuers whose securities are listed on the New York Stock Exchange to apply also to list those securities on the Nasdaq Global Market ("NGM"). Nasdaq shall make an independent determination of whether such issuers satisfy all applicable listing requirements and shall require issuers to enter into a dual listing agreement with Nasdaq.

While Nasdaq shall certify such dually listed securities for listing on the NGM, Nasdaq shall not exercise its authority under Rule 4390 separately to designate or register such dually listed securities as Nasdaq national market system securities within the meaning of Section 11A of the Act or the rules thereunder. As a result, these securities, which are already designated as national market system securities under the Consolidated Quotation Service ("CQS") and Consolidated Tape Association national market system plans ("CQ and CTA Plans"), shall remain subject to those plans and shall not become subject to the Nasdaq UTP Plan, the national market system plan governing securities designated by Nasdaq. For purposes of the national market system, such securities shall continue to trade under their current one, two, or three-character ticker symbol. Nasdaq shall continue to send all quotations and transaction reports in such securities to the processor for the CTA Plan. In addition, dually listed issues that are currently eligible for trading via the Intermarket Trading System ("ITS") shall remain so and continue to trade on the Nasdaq Intermarket trading platform as they do today.

Through this interpretation, Nasdaq also resolves any potential conflicts that arise under Nasdaq rules as a result of a single security being both a security subject to the CQ and CTA Plans (a "CQS security"), which is subject to one set of rules, and a listed NGM

security, which is subject to a different set of rules. Specifically, dually listed securities shall be Nasdaq securities for purposes of rules related to listing and delisting, and shall remain as CQS securities under all other Nasdaq rules. Treating dually listed securities as CQS securities under Nasdaq rules is consistent with their continuing status as CQS securities under the CTA, CQ, and ITS national market system, as described above. This interpretation also preserves the status quo and avoids creating potential confusion for investors and market participants that currently trade these securities on Nasdaq. For example, Nasdaq shall continue to honor the trade halt authority of the primary market under the CQ and CT Plans. Nasdaq Rule 4120(a)(2) and (3) governing CQS securities shall apply to dually listed securities, whereas Nasdaq Rule 4120(a)(1), (4), (5), (6), and (7) shall not. [SEC Rule 10a-1 governing short sales of CQS securities shall continue to apply to dually listed securities, rather than Nasdaq Rule 3350 governing short sales of Nasdaq-listed securities.] Market makers in dually listed securities shall retain all obligations imposed by the Nasdaq Rule 5200 Series regarding CQS securities rather than assuming the obligations appurtenant to Nasdaq-listed securities. The fees applicable to CQS securities set forth in Nasdaq Rule 7010 shall continue to apply to dually listed issues.

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4755. Order Entry Parameters

(a) System Orders

(1) General—A System order is an order that is entered into the System for display and/or execution as appropriate. Such orders are executable against marketable contra-side orders in the System.

(A) All System Orders shall indicate limit price and whether they are a buy, short sale, [short-sale exempt,] or long sale. Systems Orders can be designated as Market Hours Immediate or Cancel (“MIOC”), Market Hours Good-till-Cancelled (“MGTC”), Market Hours Day (“MDAY”), System Hours Expire Time (“SHEX”), System Hours Day (“SDAY”), System Hours Immediate or Cancel (“SIOC”), System Hours Good-till-Cancelled (“SGTC”), or Good-til-Market Close “GTMC”).

(B) –(C) No change.

(2) Reserved [Short Sale Compliance—System orders to sell short shall not be executed if the execution of such an order would violate any applicable short sale regulation of the SEC or Nasdaq. For Nasdaq securities, the System shall validate for short sale compliance using a bid tick based upon changes to the national best bid and offer disseminated pursuant to an effective transaction reporting plan. For NYSE and Amex securities, the System shall validate for short sale compliance based upon changes to the consolidated last sale disseminated pursuant to an effective transaction reporting plan.]

(3) – (4) No change.

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4758. Order Routing

(a) Order Routing Process

(1) No change. The Order Routing Process shall be available to Participants from 7:00 a.m. until 8:00 p.m. Eastern Time, and shall route orders as described below: Beginning March 5, 2007, in connection with the trading of

securities governed by Regulation NMS, all routing of orders shall comply with Rule 611 of Regulation NMS under the Exchange Act.

(A) – (B) No change.

(C) Priority of Routed Orders. Regardless of the routing option selected, orders sent by the System to other markets do not retain time priority with respect to other orders in the System and the System shall continue to execute other orders while routed orders are away at another market center. Once routed by the System, an order becomes subject to the rules and procedures of the destination market including, but not limited to, [short-sale regulation and] order cancellation. If a routed order is subsequently returned, in whole or in part, that order, or its remainder, shall receive a new time stamp reflecting the time of its return to the System.

4759. ITS Commitments

Until such time as Nasdaq withdraws from the ITS Plan, Quotes and Orders that are eligible for ITS will be processed by the System and routed to the appropriate Non-Nasdaq Participant Market as an ITS Commitment in accordance with the requirements of the ITS Plan and all applicable Nasdaq rules. Nasdaq shall participate in the ITS Plan as set forth below.

(a) No change.

(b) Inbound ITS Commitments

(1) No change.

(2) [If the ITS Commitment, if executed, would result in a violation of SEC Rule 10a-1, the Nasdaq Market Center will decline it.] Reserved

(3) No change.

(c) Outbound Commitments: Any "commitment to trade," which is transmitted by Nasdaq to another Non-Nasdaq ITS Participant Market through ITS, shall be firm and irrevocable for the period of thirty seconds following transmission by the sender. All such commitments to trade shall, at a minimum:

(1) – (5) No change.

[(6) designate the commitment "short" or "short exempt" whenever it is a commitment to sell which, if it should result in an execution in the receiving market, would result in a short sale to which the provisions of SEC Rule 10a-1(a) under the Act would apply.]

(d) – (e) No change.

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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. The text of these statements may be examined at the places specified in Item IV below, and is set forth in Sections A, B, and C below.

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

1. Purpose

On June 13, 2007, the SEC voted to adopt certain amendments to SEC Rule 10a-1 and Regulation SHO under the Act. The amendments, among other things: (1) eliminate the short sale price test contained in SEC Rule 10a-1; (2) add Rule 201(a) of Regulation

SHO to provide that no price test, including any price test of any self-regulatory organization (“SRO”), shall apply to short sales in any security; (3) add Rule 201(b) of Regulation SHO to prohibit any SRO from having a price test; and (4) amend Rule 200(g) of Regulation SHO to remove the requirement that a broker-dealer mark a sell order of an equity security as “short exempt” if the seller is relying on an exception from the price test of Rule 10a-1, or any price test of any exchange or national securities association. The amendments to SEC Rule 10a-1 and Regulation SHO became effective on July 3, 2007, and had a July 6, 2007 compliance date.

The purpose of this proposed rule change is to make conforming changes to Nasdaq rules to reflect the elimination of SEC Rule 10a-1 and other amendments to Regulation SHO by: (1) eliminating references to SEC Rule 10a-1 in Nasdaq rules; and (2) repealing Nasdaq’s short sale rule contained in Rule 3350 and IM-3350, as well as amending Nasdaq rules that reference Rule 3350 or IM-3350.

Eliminating References to SEC Rule 10a-1 in Nasdaq Rules. Currently, Rule 3360 (Short-Interest Reporting) requires members to record and report short interest information to Nasdaq. Reportable short positions are those resulting from “short sales” as the term is defined in SEC Rule 200 of Regulation SHO, with the exception of positions that meet the requirements of subsections (e)(1), (6), (7), (8), and (10) of Rule 10a-1 of the Act.⁴ As a result of the repeal of SEC Rule 10a-1, these subsections will no longer exist. Therefore, Nasdaq is proposing a technical change to Rule 3360 to replace the references to these exceptions to SEC Rule 10a-1 with the underlying rule text of

⁴ See Nasdaq Rule 3360(b)(1).

each provision. Nasdaq also is proposing to make conforming amendments to IM-4390 and Rules 4744, 4758, and 4759 to remove references to SEC Rule 10a-1.

Repeal of Nasdaq's Short Sale Rule. As noted above, the SEC has removed the restrictions on the execution prices of short sales and prohibited SROs from having price tests. Rule 3350 and IM-3350 generally prohibit a member from effecting short sales in Nasdaq Global Market securities otherwise than on an exchange for a customer account, or the member's own account, at or below the current national best (inside) bid, when the current national best (inside) bid is below the preceding national best (inside) bid. As an SRO, Nasdaq now is prohibited from having such a short sale price test under newly adopted SEC Rule 201 of Regulation SHO. Accordingly, Nasdaq proposes to repeal its short sale rule contained in Rule 3350 and the related interpretive material in IM-3350 and is proposing conforming changes to IM-4390 and Rules 4755, 4758, and 4759 to delete references to Rule 3350 in such rules.

Technical Changes. Nasdaq also proposes to make a technical change to the text of Rule 3360. Specifically, Rule 3360(b) provides that, subject to certain limited exceptions, short positions required to be reported under the rule are those resulting from short sales as the term is defined in Rule 200 of Regulation SHO. The term "short sale" is actually defined in Rule 200(a) of Regulation SHO. Therefore, Nasdaq is proposing to amend the text of Rule 3360 to reference Regulation SHO Rule 200(a), instead of Rule 200, to eliminate any confusion.

Implementation. As noted above, Nasdaq has filed the proposed rule change for immediate effectiveness. Nasdaq proposes to make the proposed rule change operative

on July 6, 2007, to coincide with the operative date of the amendments to SEC Rule 10a-1 and Regulation SHO.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act,⁵ which requires, among other things, that Nasdaq 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. Nasdaq believes that the proposed rule change is necessary and appropriate to comply with the amendments to SEC Rule 10a-1 and Regulation SHO.

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

Nasdaq does not believe that the proposed rule change will impose 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 on the proposed rule change 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

5 15 U.S.C. 78f(b)(5).

to Section 19(b)(3)(A) of the Act⁶ and Rule 19b-4(f)(6) thereunder.⁷ Nasdaq has requested that the Commission waive the 5-day pre-filing notice and 30-day pre-operative period requirements for “non-controversial” proposals, based upon a representation that such waivers will allow Nasdaq to implement the rule changes to conform to currently effective changes in Regulation SHO and Rule 10a-1. In light of the foregoing, the Commission believes that waiver of the 5-day notice and 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission has determined to waive the notice requirement and the operative delay,⁸ and the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act,⁹ and Rule 19b-4(f)(6) thereunder,¹⁰ with no operative delay.

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.

IV. Solicitation of Comments

6 15 U.S.C. 78s(b)(3)(A).

7 17 C.F.R. 240.19b-4(f)(6).

8 For purposes only of waiving the 30 day pre-operative period, the Commission has considered the impact of the proposed rule change on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

9 15 U.S.C. 78s(b)(3)(A).

10 17 CFR 240.19b-4(f)(6).

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-NASDAQ-2007-065 on the subject line.

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2007-065. 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 website (<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, 100 F Street, NE, Washington, D.C. 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 offices of the Exchange. 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-NASDAQ-2006-065 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Florence E. Harmon
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).