

UNITED STATES OF AMERICA

before the

SECURITIES AND EXCHANGE COMMISSION

Securities Exchange Act of 1934
Release No. 52426 / September 14, 2005

In the Matter of:)
)
The National Association of Securities)
Dealers, Incorporated)
)
(File No. SR-NASD-2005-093))

ORDER
OF
SUMMARY
ABROGATION

Notice is hereby given that the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(3)(C) of the Securities Exchange Act of 1934 ("Exchange Act"),¹ is summarily abrogating a proposed rule change of The National Association of Securities Dealers, Incorporated ("NASD").

On July 20, 2005, the NASD filed SR-NASD-2005-093.² The NASD submitted the rule change for immediate effectiveness pursuant to Section 19(b)(3)(A) of the Exchange Act.³ The proposed rule change amended NASD Rule 3370 to clarify that members must make an affirmative determination and document compliance when effecting long sale orders. In the proposal, the NASD stated that it proposed to amend Rule 3370, "to re-adopt expressly the affirmative determination requirements as they now relate to member obligations with respect to

¹ 15 U.S.C. 78s(b)(3)(C).

² See Securities Exchange Act Release No. 52131 (Jul. 27, 2005), 70 FR 44707 (Aug. 3, 2005).

³ 15 U.S.C. 78s(b)(3)(A).

long sales under Regulation SHO.”⁴ The NASD designated the rule change proposal as “non-controversial” under paragraph (f)(6) of Rule 19b-4 under the Exchange Act,⁵ which renders the proposal effective upon filing with the Commission.

Pursuant to Section 19(b)(3)(C) of the Exchange Act,⁶ at any time within 60 days of the date of filing a proposed rule change pursuant to Section 19(b)(1) of the Exchange Act,⁷ the Commission may summarily abrogate the change in the rules of the self-regulatory organization and require that the proposed rule change be re-filed in accordance with the provisions of Section 19(b)(1) of the Exchange Act⁸ and reviewed in accordance with Section 19(b)(2) of the Exchange Act,⁹ 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 Exchange Act.

The Commission has received three comment letters in response to the proposed rule change.¹⁰ The substance of the comment letters call into question the “non-controversial” designation of the proposal.

⁴ See Securities Exchange Act Release No. 52131, 70 FR at 44708.

⁵ A proposed rule filing may take effect upon filing with the Commission pursuant to Section 19(b)(3)(A) if it is properly designated by the self-regulatory organization as effecting a change that: “(i) Does not significantly affect the protection of investors or the public interest; (ii) Does not impose any significant burden on competition; and (iii) By its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate” 17 CFR 240.19b-4(f)(6).

⁶ 15 U.S.C. 78s(b)(3)(C).

⁷ 15 U.S.C. 78s(b)(1).

⁸ Id.

⁹ 15 U.S.C. 78s(b)(2).

¹⁰ See letter from Ira D. Hammerman, Senior Vice President and General Counsel, Securities Industry Association, to Jonathan G. Katz, Secretary, Commission, dated Aug. 24, 2005; letter from Julian Rainero, Bingham McCutchen LLP, to Jonathan G. Katz, Secretary, Commission, dated Aug. 24, 2005; letter from Shane E. Swanson, General Counsel, Automated Trading Desk, LLC, to Jonathan Katz, Secretary, Commission, dated Aug. 24, 2005.

Accordingly, the Commission believes that the procedures provided by Section 19(b)(2) of the Exchange Act¹¹ will provide a more appropriate mechanism for determining whether the proposed rule change is consistent with the Exchange Act. Therefore, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Exchange Act, to abrogate the proposed rule change.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(3)(C) of the Exchange Act,¹² that File No. SR-NASD-2005-093 be, and it hereby is, summarily abrogated. If the NASD chooses to re-file the proposed rule change, it must do so pursuant to Sections 19(b)(1)¹³ and 19(b)(2) of the Exchange Act.¹⁴

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Jonathan G. Katz
Secretary

¹¹ Id.

¹² 15 U.S.C. 78s(b)(3)(C).

¹³ 15 U.S.C. 78s(b)(1).

¹⁴ 15 U.S.C. 78s(b)(2).

¹⁵ 17 CFR 200.30-3(a)(58).