

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55274; File No. SR-NASD-2007-012)

February 12, 2007

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Implement Certain Approved NASD Rule Changes Upon the Operation of the Nasdaq Stock Market LLC for Non-Nasdaq Exchange-Listed 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 February 9, 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 prepared by the NASD. The NASD filed the proposed rules change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposed rule change 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

The NASD has filed a proposed rule change to (1) provide notice that the amendments to the NASD Rule 4700 Series that were approved pursuant to SR-NASD-2006-104⁵ will not be implemented; (2) implement certain amendments that were

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).

⁵ See Securities Exchange Act Release No. 54798 (November 21, 2006), 71 FR 69156 (November 29, 2006) (order approving SR-NASD-2006-104).

approved pursuant to SR-NASD-2006-104 upon the operation of the Nasdaq Stock Market LLC (the “Nasdaq Exchange”) as a national securities exchange for non-Nasdaq exchange-listed securities; and (3) propose additional changes that were not approved pursuant to SR-NASD-2006-104, specifically the deletion of the Rule 4700 Series and Rule 5150. All other rule changes that were approved pursuant to SR-NASD-2006-104, and were not implemented pursuant to SR-NASD-2006-135,⁶ will be implemented upon the operation of NASD’s Alternative Display Facility (“ADF”) for non-Nasdaq exchange-listed securities, as approved by the Commission on September 28, 2006.⁷ The text of the proposed amendments is available at the NASD, from the Commission’s Public Reference Room, and on the NASD’s Web site (www.nasd.com).

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

In its filing with the Commission, the 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.

⁶ See Securities Exchange Act Release No. 54984 (December 20, 2006), 71 FR 78245 (December 28, 2006) (notice of filing and immediate effectiveness of SR-NASD-2006-135).

⁷ See Securities Exchange Act Release No. 54537 (September 28, 2006), 71 FR 59173 (October 6, 2006) (order approving SR-NASD-2006-091).

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

1. Purpose

On June 30, 2006, the Commission approved SR-NASD-2005-087, which, among other things, proposed an implementation strategy for the operation of the Nasdaq Exchange as a national securities exchange for Nasdaq-listed securities during a transitional period and also proposed rules for reporting trades in Nasdaq-listed securities effected otherwise than on an exchange to the NASD/Nasdaq Trade Reporting Facility (the “NASD/Nasdaq TRF”).⁸ On November 21, 2006, the Commission approved SR-NASD-2006-104, which, among other things, proposed amendments necessary to reflect the complete separation of The Nasdaq Stock Market Inc. (“Nasdaq”) from the NASD upon the operation of the Nasdaq Exchange as a national securities exchange for non-Nasdaq exchange-listed securities and also proposed to expand the scope of the NASD/Nasdaq TRF rules to include reporting of over-the-counter trades in non-Nasdaq exchange-listed securities.⁹

As originally approved, the rule changes in SR-NASD-2006-104 were to become effective on the date that the Nasdaq Exchange commences operation as a national securities exchange for non-Nasdaq exchange-listed securities. However, as described in SR-NASD-2006-135, for a transitional period, Nasdaq has continued to operate the SuperIntermarket (SiM) trading platform on NASD’s behalf via the Transitional System

⁸ See Securities Exchange Act Release No. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006) (order approving SR-NASD-2005-087).

⁹ See Securities Exchange Act Release No. 54798 (November 21, 2006), 71 FR 69156 (November 29, 2006) (order approving SR-NASD-2006-104).

and Regulatory Services Agreement.¹⁰ As contemplated in SR-NASD-2006-135, the NASD has determined to continue to use Nasdaq as a vendor to operate SiM, even upon the Nasdaq Exchange's operation as an exchange for non-Nasdaq exchange-listed securities, which is currently scheduled for February 12, 2007.¹¹ As such, the current rules relating to SiM will remain in place and the approved rule changes to the Rule 4700 Series in SR-NASD-2006-104 will not be implemented.

In addition, the following rule changes that were approved pursuant to SR-NASD-2006-104 will be implemented on the date upon which the Nasdaq Exchange operates as a national securities exchange for non-Nasdaq exchange-listed securities: (1) deletion of the Rule 4900 Series and the 4950 Series; and (2) adoption of new Rules 5120 (Other Trading Practices) and 5130 (Obligation to Provide Information) relating to trading otherwise than on an exchange. All other rule changes that are part of SR-NASD-2006-104, and were not implemented pursuant to SR-NASD-2006-135 (i.e., amendments to the Rule 0100 Series; amendments to the Rule 4000 Series and Rule 6100 Series relating to the NASD/Nasdaq TRF; deletion of Rule 4400; amendments to Rule 11890, Interpretive Material (IM) 11890-1 and IM-11890-2; and the deletion of IM-11890-3), will be implemented upon the operation of the ADF for non-Nasdaq exchange-listed securities,

¹⁰ See Securities Exchange Act Release No. 54984 (December 20, 2006), 71 FR 78245 (December 28, 2006) (notice of filing and immediate effectiveness of SR-NASD-2006-135). In that filing, amendments to the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries and the By-Laws of NASD, NASD Regulation and NASD Dispute Resolution, and the deletion of the Nasdaq By-Laws, which were previously approved in SR-NASD-2006-104, were implemented on December 20, 2006 to reflect Nasdaq's complete separation from NASD, and, on that same date, dissolution of NASD's controlling share in Nasdaq.

¹¹ See Securities Exchange Act Release No. 54984 (December 20, 2006), 71 FR 78245 (December 28, 2006) (notice of filing and immediate effectiveness of SR-NASD-2006-135), infra note 13.

which will be the Regulation NMS Trading Phase Date (currently anticipated to be March 5, 2007).¹²

In this proposed rule change, NASD is proposing two additional rule changes that were not approved as part of SR-NASD-2006-104. First, NASD is proposing to delete the Rule 4700 Series in its entirety upon the operation of the ADF for non-Nasdaq exchange-listed securities.¹³ Second, NASD is proposing to delete Rule 5150 upon the operation of the ADF for non-Nasdaq exchange-listed securities. Rule 5150 requires an NASD member that is registered as a market maker with the Nasdaq Exchange in a non-Nasdaq exchange-listed security to comply with the provisions of NASD Rule 5262 relating to trade-throughs with respect to that security for trades reported to NASD. Rule 5150 was approved by the Commission on September 19, 2006 and will become effective on the date that the Nasdaq Exchange operates as a national securities exchange for non-Nasdaq exchange-listed securities.¹⁴ Upon the operation of the ADF for non-Nasdaq exchange-listed securities, the Rule 5200 Series, including Rule 5262, will be deleted pursuant to NASD-2006-091. Thus, NASD is proposing to delete Rule 5150 on that same date.

NASD has filed the proposed rule change for immediate effectiveness. NASD

¹² Pursuant to SR-NASD-2006-091, among other changes, the following will be deleted from the NASD Manual on the Trading Phase Date: the Rule 5200 Series, the Rule 6300 Series and the Rule 6400 Series.

¹³ Thus, in the period between commencement of operation of the Nasdaq Exchange for non-Nasdaq exchange-listed securities and the operation of the ADF for non-Nasdaq exchange-listed securities, the Rule 4700 Series will remain in the NASD Manual as it exists today. Upon the operation of the ADF for non-Nasdaq exchange-listed securities, the Rule 4700 Series will be deleted in its entirety.

¹⁴ See Securities Exchange Act Release No. 54471 (September 19, 2006), 71 FR 56202 (September 26, 2006) (order approving SR-NASD-2006-081).

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,¹⁵ 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 provide an effective mechanism and regulatory framework for quoting and trading activities otherwise than on an exchange in non-Nasdaq exchange-listed securities upon the operation of the Nasdaq Exchange as a national securities exchange for non-Nasdaq exchange-listed securities and the operation of the ADF for non-Nasdaq exchange-listed securities.

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.

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

¹⁵ 15 U.S.C. 78o-3(b)(6).

(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, it has become effective pursuant to Section 19(b)(3)(A) of the Act,¹⁶ and Rule 19b-4(f)(6) thereunder.¹⁷ 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.

A proposed rule change filed under Rule 19b-4(f)(6)¹⁸ normally does not become operative prior to 30 days after the date of filing. However, pursuant to Rule 19b-4(f)(6)(iii),¹⁹ the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The NASD has asked the Commission to waive the 30-day pre-operative delay. The Commission believes that such waiver is consistent with the protection of investors and the public interest because it would allow the NASD to update and clarify its rules.²⁰ The Commission notes that the proposed rule change will facilitate the implementation of NASD rules that were subject to notice and comment and approved by the Commission on November 21, 2006. For this reason, the Commission designates the proposed rule change to be operative on

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f)(6).

¹⁸ Id.

¹⁹ 17 CFR 240.19b-4(f)(6)(iii).

²⁰ For purposes only of waiving the operative date of this proposal, the Commission has considered the rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

the date that the Nasdaq Exchange begins operations as a national securities exchange for non-Nasdaq exchange-listed securities.

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-2007-012 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-2007-012. 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-2007-012 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.²¹

Florence E. Harmon
Deputy Secretary

²¹ 17 CFR 200.30-3(a)(12).