

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-55406; File Nos. SR-NASD-2006-131; SR-NYSE-2006-111; SR-Amex-2007-05)

March 6, 2007

Self-Regulatory Organizations: National Association of Securities Dealers, Inc.; New York Stock Exchange LLC; American Stock Exchange LLC; Order Approving Proposed Rule Changes to Increase the Frequency of the Short Interest Reporting Requirements

On December 4, 2006, December 7, 2006, and January 10, 2007, respectively, the National Association of Securities Dealers, Inc. (“NASD”), the New York Stock Exchange LLC (“NYSE”), and the American Stock Exchange LLC (“Amex”) (collectively, the “SROs”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act” or the “Exchange Act”)¹ and Rule 19b-4 thereunder,² filed with the Securities and Exchange Commission (the “Commission”) the proposed rule changes as described below:

- NASD proposed to increase the frequency of the short interest reporting requirements under NASD Rule 3360 from monthly to twice per month. Currently, NASD Rule 3360, Short-Interest Reporting, requires members to maintain a record of total short positions in all customer and proprietary firm accounts in OTC Equity Securities³ and securities listed on a national securities exchange if not reported to another self-regulatory organization and to regularly

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ NASD Rule 3360 provides that the term “OTC Equity Securities” refers to any equity security that is not listed on The Nasdaq Stock Market or a national securities exchange.

report such information in the manner prescribed by NASD.⁴ Thus, no changes to the text of NASD rules are required by this proposed rule change.

- NYSE proposed an amendment to NYSE Rule 421.10 (Short Positions), which would increase the frequency of the short interest reporting requirements under Rule 421.10 from monthly to twice per month. In addition, NYSE proposed additional amendments to the Rule 421.10's text in light of recent changes to NYSE organizational structure and to reflect the adoption of the Commission's Regulation SHO.⁵
- Amex proposed to increase the frequency of the short interest reporting requirements from monthly to twice a month, and to codify the short interest reporting requirement authorized by Amex Rule 30. The proposed amendment would incorporate the short interest reporting requirements into new Amex Rule 30A.

The SROs proposed an implementation date of 180 days (six months) following Commission approval of the filing in order to allow firms sufficient time to make any systems changes necessary to comply with the new requirements.

The proposed rule changes were published in the Federal Register on February 1, 2007.⁶ The Commission received one comment, which was submitted in support of this

⁴ Non-self-clearing broker-dealers generally are considered to have satisfied their reporting requirement by making appropriate arrangements with their respective clearing organizations. See NASD Notice to Members 03-08 (January 2003).

⁵ 17 CFR 242.200 through 242.203.

⁶ Securities Exchange Act Release No. 55170 (January 26, 2007), 72 FR 4756 (February 1, 2007).

proposal. Prior to the proposal, NASD had received two comments that also supported the proposal. This order approves the rule change.

Discussion and Commission Findings

A. Comments

The Commission specifically asked whether the proposed 180 day implementation period should be shortened. The Commission received one comment letter.⁷ The commenter supported the NYSE and NASD proposals⁸ because she favored regulation of short sales generally. However, the commenter believed that the implementation period should be shortened.

Prior to filing with the Commission, NASD solicited comments on its proposed rule change in NASD Notice to Members 05-63 (September 2005) and received two comments.⁹ Of the two comment letters received, both were in favor of the proposed rule change. One commenter noted that minimal programming and costs would be required to implement this proposal, but recommended six months for implementation of the proposal.¹⁰ The other commenter indicated that increases or decreases in short interest positions are significant

⁷ Letter from Carol McCrory, Visting Assistant Professor of Legal Skills, Stetson University College of Law (Jan. 30, 2007) (commenting on SR-NASD-2006-131 and SR-NYSE-2006-111).

⁸ See id. The letter did not comment on the Amex proposal.

⁹ Comments were received from the following: Lisa Morel-Misener of Cognos Incorporated, dated October 27, 2005 and Christopher Charles of Wulff Hansen & Co., dated November 15, 2005.

¹⁰ See supra note 9, Wulff Hansen & Co. letter.

indicators of investor sentiment.¹¹ As such, the commenter stated that timelier reporting of short interest data provides additional relevant information and more accurate indications of changes in investor outlook.¹²

In response to these comments and in recognition of technological and systems changes that may be required to implement the proposed rule change, the Commission finds that the 180 day implementation period proposed by the SROs will provide members adequate time to make any necessary changes.

B. Related Issues

Short positions required to be reported under the SROs' rules are those resulting from "short sales" as the term is defined in Rule 200 of Regulation SHO,¹³ with certain exceptions related to Exchange Act Rule 10a-1.¹⁴ Commission staff has instructed the SROs to review these exceptions to short interest reporting to determine whether further rulemaking is appropriate.

¹¹ See supra note 9, Cognos Incorporated letter.

¹² Id.

¹³ 17 CFR 242.200.

¹⁴ 17 CFR 240.10a-1. NASD Rule 3360(b)(1) excludes positions that meet the requirements of subsections (e)(1), (6), (7), (8), and (10) of Rule 10a-1 and NYSE Rule 421.10 currently excludes positions resulting from sales specified in subsections (1), (6), (7), (8), (9) and (10) of paragraph (e) of Rule 10a-1. NYSE's proposal removes subsection (9). To conform with the NASD and NYSE rules, Amex Rule 30A as proposed excludes positions resulting from sales specified in Rule 10a-1(e) (1), (6), (7), (8) or (10).

C. Commission Findings

After a review of the rule proposals and the comments, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges and national securities associations, and in particular Sections 6(b)(5)¹⁵ and 15A(b)(6)¹⁶ of the Act, which require, among other things, that NASD, NYSE, and Amex 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. The Commission believes that the proposed rule changes will provide additional and more timely information related to short selling.¹⁷

¹⁵ 15 U.S.C. 78f(b)(5).

¹⁶ 15 U.S.C. 78o-3(b)(6).

¹⁷ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule changes (SR-NASD-2006-131; SR-NYSE-2006-111; SR-Amex-2007-05) be, and it hereby are, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁸

Florence E. Harmon
Deputy Secretary

¹⁸ 17 CFR 200.30-3(a)(12).