

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52998; File No. SR-NASD-2005-139)

December 22, 2005

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend NASD Rule 2111 to Eliminate References to NASD Rule 6440(f)(2), Which Will Be Repealed

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 December 1, 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, II and III below, which Items have been prepared by the NASD. The NASD filed the proposal as a “non-controversial” proposed rule change 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.⁵ The NASD proposes to implement the proposed rule change on January 9, 2006. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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 As required by Rule 19b-4(f)(6)(iii), 17 CFR 240.19b-4(f)(6)(iii), the NASD submitted written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposes to amend NASD Rule 2111 to delete two references to NASD Rule 6440(f)(2) in light of SR-NASD-2004-045,⁶ which repealed that rule and will be implemented January 9, 2006. Correspondingly, the NASD will implement the instant proposed rule change on January 9, 2006. The text of the proposed rule change is below. Proposed deletions are in [brackets].

2111. Trading Ahead of Customer Market Orders

This version of the rule does not become effective until January 9, 2006.

- (a) – (d) No change.
- (e) This rule applies to limit orders that are marketable at the time they are received by the member or become marketable at a later time. Such limit orders shall be treated as market orders for purposes of this rule, however, these orders must continue to be executed at their limit price or better. If a customer limit order is not marketable when received, the limit order must be provided the full protections of IM-2110-2[or Rule 6440(f)(2), as applicable]. In addition, if the limit order was marketable when received and then becomes non-marketable, once the limit order becomes non-marketable, it must be provided the full protections of IM-2110-2[or Rule 6440(f)(2), as applicable].

⁶ See Securities Exchange Act Release No. 52226 (August 9, 2005), 70 FR 48219 (August 16, 2005) (SR-NASD-2004-045).

(f) – (g) 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, the NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. The 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

On August 9, 2005, the Commission approved proposed rule change SR-NASD-2004-045 adopting NASD Rule 2111 ("Trading Ahead of Customer Market Orders"), which will be implemented on January 9, 2006. NASD Rule 2111 prohibits a member from trading for its own account at prices that would satisfy a customer market order in a Nasdaq or exchange-listed security, unless the member immediately thereafter executes the customer market order. In addition, NASD Rule 2111 provides that if a customer limit order is not marketable when received, or if the limit order is marketable when received and then becomes non-marketable, the limit order must be provided the full protections of IM-2110-2 (the "Manning Rule") or Rule 6440(f)(2), as applicable.⁷

⁷ At the time that the NASD filed SR-NASD-2004-045 in March of 2004, the Manning Rule afforded limit order protection to Nasdaq securities and NASD Rule 6440(f)(2) afforded a similar protection to exchange-listed securities. In August of 2005, the Commission approved SR-NASD-2004-089, which extended the Manning Rule to

On October 24, 2005, the NASD filed SR-NASD-2005-124 seeking to repeal NASD Rule 6440(f) because it overlaps and is generally duplicative of new NASD Rule 2111 and the Manning Rule, as amended.⁸ SR-NASD-2005-124 was filed for immediate effectiveness and the implementation date is January 9, 2006. In light of the repeal of NASD Rule 6440(f), the references to NASD Rule 6440(f)(2) in NASD Rule 2111 should be deleted.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, 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. The NASD believes that the proposed rule change will further the goals of improving the treatment of market orders and enhancing the integrity of the market by bringing consistency and clarity to its conduct rules.

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

The NASD believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The NASD has neither solicited nor received comments on the proposed rule change.

exchange-listed securities. See Securities Exchange Act Release No. 52210 (August 4, 2005), 70 FR 46897 (August 11, 2005) (SR-NASD-2004-089).

⁸ NASD Rule 6440(f) generally prohibits a member from buying (selling) an exchange-listed security for its own account while such member holds an unexecuted market order or unexecuted limit order to buy (sell) such security for a customer.

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 if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰ At any time within 60 days of the filing of such 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.¹¹

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-2005-139 on the subject line.

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 15 U.S.C. 78s(b)(3)(C).

Paper comments:

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

All submissions should refer to File Number SR-NASD-2005-139. 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 the 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-2005-139 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.¹²

Jonathan G. Katz
Secretary

¹² 17 CFR 200.30-3(a)(12).