

concerns as third-party ratings, and thus do not merit application of the bond fund volatility ratings rule.

NASD also believes that it is unnecessary at this time to apply the Rule to other types of investment companies, such as unit investment trusts. At no time throughout the extended pilot period has a member requested that the Rule apply to such material, and NASD is not aware of third-party volatility ratings that are being used to assess other types of investment companies. Accordingly, NASD sees no need to expand the Rule's scope in this manner.

NASD believes that the Rule strikes an appropriate balance between the desire of some funds to advertise volatility ratings and the need to include appropriate disclosures related to those ratings in sales material. Accordingly, NASD believes that the Commission should approve the Rule, as is, on a permanent basis.

IM-2210-5(b)(2) requires supplemental sales literature that includes bond fund volatility ratings to present the most recently available rating that "reflects information that, at a minimum, is current to the most recently completed calendar quarter ended prior to use." At the time IM-2210-5 was adopted, this standard mirrored the timeliness standard for mutual fund performance advertising under Rule 482 under the Securities Act of 1933. However, in 2003, the SEC amended Rule 482 to require mutual fund performance advertising to show performance that is current to the most recent calendar quarter ended prior to submission of an advertisement for publication, and to indicate where the reader may obtain performance that is current to the most recent month ended seven business days prior to use through a toll-free (or collect) telephone number or web site, or to present performance that meets this most recent month-end standard.<sup>12</sup>

NASD understands that rating agencies typically monitor bond funds on a monthly basis, but that it is quite rare for such agencies to revise a volatility rating on a month-to-month basis. Accordingly, NASD does not believe that it is necessary to require that volatility ratings be current as of the most recent month end given that, among other things, unlike fund performance, such ratings do not frequently change once they are issued.

<sup>12</sup> Rule 482(g) under the Securities Act of 1933.

### III. Summary of Comments Received and NASD Response

The Commission received one comment letter from ICI on the proposal and a response to the comment letter by NASD.

The ICI Letter generally expressed reservations about the use of bond mutual fund volatility ratings in supplemental sales literature.<sup>13</sup> The ICI Letter also suggested that if the pilot program was approved on a permanent basis that: (i) All of the critical investor protections of the original pilot program should remain intact, (ii) the use of a single symbol, number or letter to describe a volatility rating should be prohibited and (iii) the timeliness requirements of IM-2210-5(b)(2) should be modified to mirror the requirements of Rule 482 under the Securities Act of 1933.<sup>14</sup>

In response to ICI's general reservations regarding the use of bond mutual fund volatility ratings the NASD Response stated that "during the five and one-half years that the [bond mutual fund volatility rules] have been in effect, NASD has found no evidence that the use of volatility ratings in fund sales literature has harmed investors."<sup>15</sup> NASD also noted that it "has not proposed to eliminate any of the disclosure, filing or other investor protection requirements that were contained in the original pilot rule."<sup>16</sup>

In addition, NASD expressed doubt that use of a single symbol, number or letter to describe volatility ratings harms investors, stating "NASD fails to see how allowing the use of symbols, numbers and letters to describe a fund's volatility rating is any more harmful to investors than allowing symbols, numbers and letters to describe a fund's performance or performance ranking."<sup>17</sup>

Furthermore, NASD disagreed with ICI's recommendation to modify the timeliness requirements of IM-2210-5(b)(2).<sup>18</sup> NASD indicated that "it is quite rare for [fund rating] agencies to revise a volatility rating on a month-to-month basis." Accordingly, NASD expressed its belief that it is not necessary "to require that volatility ratings be current as of the most recent month end given that such ratings rarely change once they are issued."<sup>19</sup> NASD, however, cautioned its members that a "member may not distribute

<sup>13</sup> ICI Letter, *supra* note 5, at 1.

<sup>14</sup> *Id.* at 1-2.

<sup>15</sup> NASD Response, *supra* note 6, at 2.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 3.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

supplemental sales literature containing a bond fund volatility rating if the member knows or has reason to know that the rating is false or misleading, even if the rating was current as of the most recent calendar quarter end."<sup>20</sup>

### IV. Discussion and Findings

After careful review, the Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, 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 Commission believes that making IM-2210-5 and Rule 2210(c)(3) effective on a permanent basis will protect investors and the public interest by permitting NASD members to provide investors with useful information in a manner designed to prevent dissemination of inappropriate or misleading information.

### V. Conclusions

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>21</sup> that the proposed rule change, as amended (SR-NASD-2005-117), be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>22</sup>

Nancy M. Morris,  
Secretary.

[FR Doc. E5-8228 Filed 1-3-06; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-53026; File No. SR-NASD-2005-152]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Pilot Relating to Manning Price-Improvement Standards for Decimals

December 27, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 23, 2005, the National Association of Securities Dealers, Inc. ("NASD") filed

<sup>20</sup> *Id.* See also NASD Rule 2210(d)(1)(B).

<sup>21</sup> 15 U.S.C. 78s(b)(2).

<sup>22</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by NASD. NASD filed this proposal pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> therefore making the proposed rule change effective immediately upon filing. NASD intends for this rule change to become operative on January 1, 2006. 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**

NASD is proposing to extend through June 30, 2006, the current pilot price-improvement standards for decimalized securities contained in NASD Interpretive Material 2110-2—Trading Ahead of Customer Limit Order ("Manning Rule" or "Manning"). There are no proposed changes to the rule text.

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

In its filing with the Commission, 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.

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

##### **1. Purpose**

NASD's Manning Rule requires NASD member firms to provide a minimum level of price improvement to incoming orders in NMS and SmallCap securities if the firm chooses to trade as principal with those incoming orders at prices superior to customer limit orders they currently hold. If a firm fails to provide the minimum level of price improvement to the incoming order, the firm must execute its held customer limit orders. Generally, if a firm fails to provide the requisite amount of price improvement and also fails to execute its held customer limit orders, it is in violation of the Manning Rule.

On April 6, 2001,<sup>5</sup> the Commission approved, on a pilot basis, price-improvement standards for decimalized securities contained in Manning, which added the following language to IM-2110-2:

For Nasdaq securities authorized for trading in decimals pursuant to the Decimals Implementation Plan for the Equities and Options Markets, the minimum amount of price improvement necessary in order for a market maker to execute an incoming order on a proprietary basis in a security trading in decimals when holding an unexecuted limit order in that same security, and not be required to execute the held limit order, is as follows:

- (1) For customer limit orders priced at or inside the best inside market displayed in Nasdaq, the minimum amount of price improvement required is \$0.01; and
- (2) For customer limit orders priced outside the best inside market displayed in Nasdaq, the market maker must price improve the incoming order by executing the incoming order at a price at least equal to the next superior minimum quotation increment in Nasdaq (currently \$0.01).<sup>6</sup>

Since approval, these standards continue to operate on a pilot basis which terminates on December 31, 2005.<sup>7</sup> After consultation with Commission staff, NASD has determined to seek an extension of its current Manning pilot until June 30, 2006. NASD believes that such an extension provides for an appropriate continuation of the current Manning price-improvement standard while the Commission continues to analyze the issues related to customer limit order protection in a decimalized environment. NASD is not proposing any other changes to the pilot at this time. NASD proposes to make the proposed rule change operative on January 1, 2006.

##### **2. Statutory Basis**

NASD believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,<sup>8</sup> in general, and with Section 15A(b)(6) of the Act,<sup>9</sup>

in particular, in that it is 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 improve treatment of customer limit orders and enhance the integrity of the market.

#### *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**

This proposal has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder<sup>11</sup> because the proposal: (1) Does not significantly affect the protection of investors or the public interest, (2) does not impose any significant burden on competition, and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest.<sup>12</sup> NASD has requested that the Commission waive the 30-day operative delay and designate the proposed rule change effective immediately. NASD intends for the rule to become operative on January 1, 2006.

The Commission hereby grants the request.<sup>13</sup> The Commission believes that such waiver is consistent with the

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>11</sup> 17 CFR 240.19b-4(f)(6).

<sup>12</sup> Pursuant to Rule 19b-4(f)(6)(iii) of the Act, a proposed rule change does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission 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 of the proposed rule change, or such shorter time as designated by the Commission. NASD complied with the five day pre-filing requirement.

<sup>13</sup> For purposes only of accelerating the operative date of the proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>5</sup> See Securities Exchange Act Release No. 44165 (April 6, 2001), 66 FR 19268 (April 13, 2001).

<sup>6</sup> Pursuant to the terms of the Decimals Implementation Plan for the Equities and Options Markets, the minimum quotation increment for Nasdaq securities (both National Market and SmallCap) at the outset of decimal pricing is \$0.01. As such, Nasdaq displays priced quotations to two places beyond the decimal point (to the penny). Quotations submitted to Nasdaq that do not meet this standard are rounded to the nearest minimum quotation increment (namely, \$0.01), specifically, rounded down for buy orders and rounded up for sell orders. See Securities Exchange Act Release No. 43876 (January 23, 2001), 66 FR 8251 (January 30, 2001).

<sup>7</sup> See Securities Exchange Act Release No. 51953 (June 30, 2005), 70 FR 39839 (July 11, 2005).

<sup>8</sup> 15 U.S.C. 78o-3.

<sup>9</sup> 15 U.S.C. 78o-3(b)(6).

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

protection of investors and the public interest because it will allow the protection of customer limit orders provided by the pilot to continue without interruption.

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

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](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2005-152 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 20549-9303.

All submissions should refer to File Number SR-NASD-2005-152. 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 the File Number SR-NASD-2005-152 and should be submitted on or before January 25, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Nancy M. Morris,**  
Secretary.

[FR Doc. E5-8229 Filed 1-3-06; 8:45 am]

**BILLING CODE 8010-01-P**

#### SMALL BUSINESS ADMINISTRATION

[License No. 09/79-0456]

##### Horizon Ventures Fund II, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Horizon Ventures Fund II, L.P., 4 Main Street, Suite 50, Los Altos, CA 94022, a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration ("SBA") Rules and Regulations (13 CFR 107.730). Horizon Ventures Fund II, L.P. proposes to provide equity/debt security financing to iWatt, Inc. The financing is contemplated for working capital and general corporate purposes.

The financing is brought within the purview of § 107.730(a)(1) of the Regulations because Horizons Ventures Fund I, L.P. and Horizons Ventures Advisors Fund I, L.P., all Associates of Horizon Ventures Fund II, L.P., own more than ten percent of iWatt, Inc.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: December 19, 2005.

**Jaime Guzmán-Fournier,**  
Associate Administrator for Investment.  
[FR Doc. E5-8249 Filed 1-3-06; 8:45 am]

**BILLING CODE 8025-01-P**

<sup>14</sup> 17 CFR 200.30-3(a)(12).

#### DEPARTMENT OF TRANSPORTATION

##### Federal Aviation Administration

[Summary Notice No. PE-2005-68]

##### Petitions for Exemption; Dispositions of Petitions Issued

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of disposition of prior petition.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains the disposition of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**FOR FURTHER INFORMATION CONTACT:** Tim Adams (202) 267-8033, Sandy Buchanan-Sumter (202) 267-7271, or John Linsenmeyer (202) 267-5174, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on December 28, 2005.

**Anthony F. Fazio,**  
Director, Office of Rulemaking.

##### Disposition of Petitions

*Docket No.:* FAA-2005-22385.  
*Petitioner:* The Boeing Company.  
*Sections of 14 CFR Affected:* 14 CFR 25.1447(c)(1).

*Description of Relief Sought/Disposition:* To allow relief from the requirement for passenger oxygen masks to be automatically presented before the cabin pressure altitude exceeds 15,000 feet for the Boeing Model 737NG aircraft. *Grant of Exemption, 12/02/2005, Exemption No. 8668.*

*Docket No.:* FAA-2005-22961  
*Petitioner:* Mr. Joseph Weisbrod .  
*Sections of 14 CFR Affected:* 4 CFR 65.104(a)(2).

*Description of Relief Sought/Disposition:* To allow Mr. Joseph Weisbrod to apply for a repairman certificate for a Cassutt IIIM aircraft when the repairman certificate for this aircraft had been issued to the aircraft's co-builder. *Grant of Exemption, 12/02/2005, Exemption No. 8669.*