

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of the filing, 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 Act¹⁶ 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) normally may not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii)¹⁸ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest.¹⁹ The Commission believes that the proposed rule change will facilitate the ability of Nasdaq members to utilize Nasdaq's automated system to comply with their respective obligations under Regulation NMS.

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 e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2007-020 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-NASDAQ-2007-020. 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 filings will also be available for inspection and copying at the principal office of the Exchange. 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-NASDAQ-2007-020 and should be submitted on or before April 2, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁰

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

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

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

March 6, 2007.

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 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

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.

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).

¹⁶ 15 U.S.C. 78s(b)(3)(A).

¹⁷ 17 CFR 240.19b-4(f)(6). When filing a proposed rule change pursuant to Rule 19b-4(f)(6) under the Act, an exchange is required to give 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. The Exchange has requested that the Commission waive the 5-day pre-filing notice requirement. The Commission has determined to grant this request.

¹⁸ 17 CFR 19b-4(f)(6)(iii).

¹⁹ For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁰ 17 CFR 200.30-3(a)(12).

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 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 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.

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

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).

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.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55398; File No. SR-NYSE-2007-25]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Rule 123D (Openings and Halts In Trading)

March 5, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 2, 2007, the New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared substantially by the Exchange. The Exchange has filed the proposal 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. 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 Exchange is proposing to amend Exchange Rule 123D to add new section (3) to enable the Exchange to halt trading in a security whose price may be about to fall below \$1.00 per share, without delisting the security, so that the security may continue to trade on other markets that deal in bids, offers, orders, or indications of interest in sub-penny prices, until the price of the security has recovered sufficiently to

¹⁸ 17 CFR 200.30-3(a)(12).

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 17 CFR 242.200 through 242.203.

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

⁷ Letter from Carol McCrory, Visiting 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.