aware of how his or her transaction price compares to the initial public offering price of the security. Appropriate disclosure of a security's original issue discount feature should assist customers in computing the market discount or premium on their transaction.

2. Statutory Basis

The MSRB has adopted the proposed rule change pursuant to Section 15B(b)(2)(C) of the Act,[6] which authorizes the MSRB to adopt rules that shall:

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The MSRB has always interpreted its Rule G–17, on fair dealing, to encompass two general principles. First, the rule imposes a duty on dealers not to engage in deceptive, dishonest, or unfair practices. In addition to the basic antifraud provisions in the rule, the rule imposes a duty to deal fairly with all persons. As part of a dealer's obligation to deal fairly, the MSRB has interpreted the rule to create affirmative disclosure obligations for dealers. The proposed rule change will further the purposes of Section 15B(b)(2)(C) by reminding dealers of their obligations to deal fairly with customers and affirmatively disclose, at or before the sale of municipal securities to a customer, all material facts concerning the transaction including a security's original issue discount feature.

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

The MSRB does not believe that the proposed rule change will impose any burden on competition among dealers not necessary or appropriate in furtherance of the purposes of the Act because it applies equally to all dealers in municipal securities.

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.

[6] 15 U.S.C. 78o–4(b)(2)(C).

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

The MSRB has designated this proposed rule change as constituting a stated policy, practice or interpretation with respect to the meaning, administration or enforcement of an existing MSRB rule under Section 19(b)(3)(A)(i) of the Act,[7] and Rule 19b–4(f)(1) thereunder,[8] which renders the proposed rule change effective upon filing with the Commission.

At any time within 60 days of this filing, the Commission may summarily abrogate this proposal 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.[9]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal 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–MSRB–2005–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–MSRB–2005–01. 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 office of the MSRB. 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–MSRB–2005–01 and should be submitted on or before February 9, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–174 Filed 1–18–05; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4.

[9] *See* 15 U.S.C. 78s(b)(3)(C).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51025; File No. SR–NASD–2005–01]

Self-Regulatory Organizations; Notice of a Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Changes to Rule 3360 in Light of the SEC Regulation SHO

January 11, 2005.

Pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 7, 2005, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. NASD has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(3).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4.

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

NASD is proposing to amend NASD Rule 3360 to change references from ''SEC Rule 3b–3'' to ''SEC Rule 200,'' thereby conforming the rule language in Rule 3360 in light of the SEC's new short sale regulation, Regulation SHO. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

3360. Short-Interest Reporting

(a) No change.

(b) For purposes of this Rule, ''short'' positions to be reported are those resulting from ''short sales'' as that term is defined in SEC Rule *200*[3b–3,] of Regulation SHO, with the exception of positions that meet the requirements of Subsections (e)(1), (6), (7), (8), [(9),] and (10) of SEC Rule 10a–1 adopted under the Act.

* * * * *

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

On June 23, 2004, the SEC adopted certain provisions of a new short sale regulation, designated Regulation SHO (Reg SHO).[4] Reg SHO includes, among other provisions, a new SEC Rule 200, which among other things, incorporates SEC Rule 3b–3 under the Act with some modifications to define ownership and aggregation of securities positions, and includes a requirement to mark all sell orders in all equity securities. SEC Rule 3b–3 was repealed and reserved. The compliance date for SEC Rule 200 of Reg SHO was January 3, 2005.

Given that SEC Rule 3b–3 is now incorporated in the new SEC Rule 200 established by Reg SHO, NASD is proposing to amend Rule 3360 to replace the reference to ''SEC Rule 3b–3'' with ''SEC Rule 200,'' thereby conforming the rule language in Rule 3360 in light of Reg SHO. NASD has filed the proposed rule change for immediate effectiveness. The effective date and the implementation date will be the date of filing, January 7, 2005.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[5] which requires, among other things, that NASD 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. NASD believes that conforming references in Rule 3360 to new SEC Rule 200 in recently adopted Reg SHO will more easily identify the appropriate definitions of ''short sales.''

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, as amended.

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 (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder. NASD requests that the Commission waive both the 5-day notice and 30-day pre-operative requirements contained in Rule 19b–4(f)(6)(iii).[6] NASD believes good cause exists to grant such waivers because of the importance of short sale regulation to the protection of investors and the fact that the pilot programs will each expire if not extended. NASD will implement this rule change immediately.

The Commission believes that waiving the 5-day notice and 30-day pre-operative delay is consistent with the protection of investors and the public interest. The Commission believes that accelerating the operative date does not raise any new regulatory issues, significantly affect the protection of investors or the public interest, or impose any significant burden on competition. For these reasons, the Commission designates the proposed rule change as effective and operative immediately.

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*. Please include File Number SR–NASD–2005–001 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NASD–2005–001. 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

[4] *See* Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008 (August 6, 2004).

[5] 15 U.S.C. 78o–3(b)(6)(A).

[6] Under subparagraph (f)6)(iii) of Rule 19b–4, the proposal may 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, and the self-regulatory organization must file notice of its intent to file the proposed rule change at least five business days beforehand. 17 CFR 240.19b–4(f)(6)(iii).

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, 450 Fifth Street, NW., Washington, DC 20549. 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–2005–001 and should be submitted on or before February 9, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E5–173 Filed 1–18–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–51023; File No. SR–NASD–2004–174]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto Relating to Frequency of Updates From the National Do-Not-Call Registry

January 11, 2005.

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 November 24, 2004 the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I and II below, which Items have been prepared by NASD. On January 6, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposed rule change, as amended, on an accelerated basis.

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

NASD is proposing to amend NASD Rule 2212, to require a member that seeks to qualify for the safe harbor set forth in NASD Rule 2212 to, among other things, use a process to prevent telephone solicitations to any telephone number in a version of the national do-not-call registry obtained from the administrator of the registry no more than thirty-one (31) days prior to the date any call is made. This proposed amendment is consistent with recent amendments to the comparable do-not-call rules of the Federal Trade Commission (''FTC'') and the Federal Communications Commission (''FCC''). Below is the text of the proposed rule change. Proposed new language is in *italics.* Proposed deletions are in [brackets].

2200. Communications With Customers and the Public

2210. Communications with the Public

* * * * *

2212. Telemarketing

(a) No Change.
(b) No Change.
(c) Safe Harbor Provision.
(1)–(3) No Change.
(4) Accessing the national do-not-call database. The member uses a process to prevent telephone solicitations to any telephone number on any list established pursuant to the do-not-call rules, employing a version of the national do-not-call registry obtained from the administrator of the registry no more than [three months] *thirty-one (31) days* prior to the date any call is made, and maintains records documenting this process.
(d)–(g) No Change.

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 had received on the proposed rule change. The text of these statements may be examined at the places specified in Item III 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

In 2003, the FTC, via its Telemarketing Sales Rule, and the FCC, via its Miscellaneous Rules Relating to Common Carriers, established requirements for sellers and telemarketers to participate in a national do-not-call registry.[4] Since June 2003, consumers have been able to enter their home telephone numbers into the national do-not-call registry, which is maintained by the FTC. Under rules of the FTC and FCC, sellers and telemarketers generally are prohibited from making telephone solicitations to consumers whose numbers are listed in the national do-not-call registry. The FCC's do-not-call rules apply to broker-dealers while the FTC's rules do not.[5]

In July 2003, the SEC requested that NASD amend its telemarketing rules to require NASD members to participate in the national do-not-call registry.[6] Because broker-dealers are subject to the FCC's do-not-call rules, NASD modeled its rules in this area after those of the FCC and codified these do-not-call requirements in NASD Rule 2212, with minor modifications tailoring the rules to broker-dealer activities and the securities industry. The SEC approved these rules in January 2004.[7]

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, NASD filed a partial amendment to request that the Commission approve the proposed rule change on an accelerated basis pursuant to Section 19(b)(2) of the Securities Exchange Act of 1934 (''Act''). The partial amendment also changes the effective date of the proposed rule change from January 1, 2005 to March 1, 2005.

[4] The do-not-call rules of the FCC and FTC are very similar in terms of substance, in part, because Congress directed the FCC to consult with the FTC to maximize consistency between their respective do-not-call rules. *See* The Do-Not-Call Implementation Act, 108 Public Law 10, 117 Stat. 557 (March 11, 2003).

[5] *See* 15 U.S.C. 6102(d)(2)(A), which provides that ''The rules promulgated by the Federal Trade Commission under subsection (a) shall not apply to * * * [among other persons, brokers or dealers] * * *. .'' The FTC's do-not-call rules were promulgated under 15 U.S.C. 6102. The FCC's rules are not subject to this limitation and apply to all sellers and telemarketers. *See* NASD *Notice to Members* 04–15 for a more extensive discussion of the concurrent application of FCC and NASD rules in this area.

[6] The Telemarketing and Consumer Fraud and Abuse Prevention Act of 1994 (codified at 15 U.S.C. 6102) requires the SEC to promulgate telemarketing rules substantially similar to those of the FTC or to direct self-regulatory organizations to promulgate such rules unless the SEC determines that such rules are not in the interest of investor protection.

[7] *See* Securities Exchange Act Release No. 49055 (January 12, 2004); 69 FR 2801 (January 20, 2004) (SR-NASD–2003–131).