

0–1(a)(7) under the Act by the compliance date for the rule.

For the Commission, by the Division of Investment Management, under delegated authority.

Nancy M. Morris,  
*Secretary.*

[FR Doc. E6–5245 Filed 4–10–06; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

### In the Matter of KSW Industries, Inc.; Order of Suspension of Trading

April 7, 2006.

It appears to the Securities and Exchange Commission (“Commission”) that there is a lack of current and accurate information concerning the securities of KSW Industries, Inc. (“KSW Industries”) because of questions regarding the accuracy of assertions by KSW Industries in statements made to investors concerning, among other things: (1) The identity of KSW Industries’ current chief executive officer and president; and (2) its business activities, including a joint venture it purportedly entered into in or about November 2005, a letter of intent it issued in or about February 2006, and negotiations it entered into in or about March 2006 to license the company’s purported EM–100 process.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed company is suspended for the period from 9:30 a.m. EDT, April 7, 2006 through 11:59 p.m. EDT, on April 21, 2006.

By the Commission.

J. Lynn Taylor,

*Assistant Secretary.*

[FR Doc. 06–3484 Filed 4–7–06; 11:34 am]

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## SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

### In the Matter of Golden Apple Oil and Gas, Inc.; Order of Suspension of Trading

April 7, 2006.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Golden Apple Oil and Gas, Inc. (“Golden Apple”), a Nevada corporation headquartered in Phoenix, Arizona. Questions have arisen regarding the accuracy of assertions by Golden Apple, and by others, in press releases and internet postings to investors concerning, among other things: (1) The company’s assets, (2) the company’s business operations, (3) the company’s current financial condition, and (4) financing arrangements involving the issuance of Golden Apple shares.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed company is suspended for the period from 9:30 a.m. EDT, April 7, 2006, through 11:59 p.m. EDT, on April 21, 2006.

By the Commission.

J. Lynn Taylor,

*Assistant Secretary.*

[FR Doc. 06–3485 Filed 4–7–06; 11:34 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53596; File No. SR–NASD–2004–044]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Short Sale Delivery Requirements

April 4, 2006.

#### I. Introduction

On March 10, 2004, the National Association of Securities Dealers, Inc. (“NASD”) filed with the Securities and Exchange Commission (“Commission” or “SEC”), 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> a proposed rule change to apply a delivery framework to certain non-reporting equity securities similar to that imposed on reporting equity securities by Regulation SHO.<sup>3</sup> The NASD submitted Amendment No. 1 to its proposed rule change on October 6, 2005 and submitted Amendment No. 2 to its proposed rule change on October 28, 2005.<sup>4</sup> The proposed rule change, as amended, was published for notice and comment in the **Federal Register** on November 16, 2005.<sup>5</sup> The Commission received nine comment letters on the proposal.<sup>6</sup> The NASD filed a response to the comment letters on March 15, 2006.<sup>7</sup>

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

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> See Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008 (Aug. 6, 2004) (“Regulation SHO Adopting Release”). The Commission adopted Regulation SHO to, among other things, impose a requirement on a participant of a registered clearing agency to take action to close out fail to deliver positions in “threshold securities.” Regulation SHO defines a “threshold security” as any equity security that is registered under Section 12 of the Act, or where the issuer of such security is required to file reports under Section 15(d) of the Act, and which security has, for five consecutive settlement days, had aggregate fails to deliver at a registered clearing agency of at least 10,000 shares that are also equal to at least 0.5% of the issuer’s total shares outstanding (“TSO”). See 17 CFR 242.203(c)(6). In the Regulation SHO Adopting Release, the Commission noted that because the calculation of the threshold that would trigger the delivery requirements under the rule depends on identifying the aggregate fails to deliver as a percentage of the TSO, the Commission believed it was necessary to limit the close out requirement to companies that are subject to the reporting requirements of the Act. See Regulation SHO Adopting Release, 69 FR at 48016, fn. 82.

<sup>4</sup> On account of the adoption of Regulation SHO, Amendment No. 1, among other things, narrowed the scope of the proposal to those equity securities not otherwise covered by the delivery requirements of Rule 203(b) of Regulation SHO. Amendment No. 2 replaced and superseded Amendment No. 1 in its entirety and made technical changes to the proposed rule change.

<sup>5</sup> See Securities Exchange Act Release No. 52752 (Nov. 8, 2005), 70 FR 69614 (Nov. 16, 2005) (“Proposing Release”).

<sup>6</sup> See Letter from Paul Vuksich, II, dated December 22, 2005; letter from Amal Aly, Vice President and Associate General Counsel, Securities Industry Association, on behalf of the Securities Industry Association Regulation SHO Working Group, dated December 14, 2005 (“SIA Letter”); letter from Jim L. Hoch, dated December 14, 2005; letter from Paul Vuksich, II, dated December 12, 2005 (“Vuksich Letter”); letter from Donald J. Stoeklein, President, Stoeklein Law Group, dated December 13, 2005 (“Stoeklein Law Group Letter”); letter from Peter J. Chepucavage, General Counsel, Plexus Consulting, dated December 1, 2005; letter from Bob O’Brien, dated November 17, 2005; letter from David Patch, dated November 14, 2005; and letter from Richard M. Rosenthal, Esq., dated November 10, 2005.

<sup>7</sup> See letter from Andrea D. Orr, Assistant General Counsel, NASD, to Nancy M. Morris, Secretary, SEC, dated March 15, 2006 (“Response to Comments”).