NSYE specialist (also known as non-billable orders). Nasdaq had previously instituted a $60,000 per month cap for non-billable orders that attempt to execute in Nasdaq before routing.[7]

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with Section 15A of the Act,[8] in general, and furthers the objectives of Section 15A(b)(5) of the Act,[9] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls.

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

Nasdaq does not believe that the proposed rule change will impose 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*

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

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

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[10] and subparagraph (f)(2) of Rule 19b–4 thereunder,[11] because it establishes or changes a due, fee, or other charge imposed by the Nasdaq. 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–2006–116 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–NASD–2006–116. 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 offices of Nasdaq.

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–2006–116 and should be submitted on or before November 30, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

**Nancy M. Morris,**

*Secretary.*

[FR Doc. E6–18959 Filed 11–8–06; 8:45 am]

**BILLING CODE 8011–01–P**

[7] The proposed rule change also deletes obsolete rule language regarding fees charged to persons that are not NASD members using Brut or Inet. Persons who are not NASD members are no longer permitted to use these systems for trading non-Nasdaq securities. Similarly, persons who are not members of The NASDAQ Stock Market LLC may not use Brut or Inet to trade Nasdaq-listed securities.

[8] 15 U.S.C. 78o–3.

[9] 15 U.S.C. 78o–3(b)(5).

[10] 15 U.S.C. 78s(b)(3)(a)(ii).

[11] 17 CFR 240.19b–4(f)(2).

[12] 17 CFR 200.30–3(a)(12).

**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34–54705; File No. SR–NASD–2005–146]**

# Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change and Amendments No. 1 and 2 Thereto To Expand the Scope of IM–2110–2 Relating To Trading Ahead of Customer Limit Orders To Apply to All OTC Equity Securities

November 3, 2006.

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 9, 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 below in Items I, II, and III, which Items have been prepared by NASD. On September 26, 2006, NASD filed Amendment No. 1 to the proposed rule change,[3] and on October 19, 2006, NASD filed Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

NASD is proposing to expand the scope of its Interpretive Material 2110–2 relating to trading ahead of customer limit orders to apply to all over-the-counter (''OTC'') equity securities. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in brackets.

## IM–2110–2. Trading Ahead of Customer Limit Order

### (a) General Application

To continue to ensure investor protection and enhance market quality, NASD's Board of Governors is issuing an interpretation to NASD Rules dealing with member firms' treatment of their customer limit orders in *NMS stocks and OTC equity* [exchange-listed] securities. This interpretation, which is applicable from 9:30 a.m. to 6:30 p.m. Eastern Time, will require members to

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

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced and superseded the original rule filing in its entirety.

[4] Amendment No. 2 replaced and superseded the amended rule filing in its entirety.

handle their customer limit orders with all due care so that members do not ''trade ahead'' of those limit orders. Thus, members that handle customer limit orders, whether received from their own customers or from another member, are prohibited from trading at prices equal or superior to that of the limit order without executing the limit order. In the interests of investor protection, NASD is eliminating the so-called disclosure ''safe harbor'' previously established for members that fully disclosed to their customers the practice of trading ahead of a customer limit order by a market-making firm.† *For purposes of this interpretation, (1) ''NMS stock'' shall have the meaning set forth in SEC Rule 600(b)(47) of Regulation NMS and (2) ''OTC equity security'' shall have the meaning set forth in Rule 6610(d).*

Rule 2110 states that:

A member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade.

Rule 2320, the Best Execution Rule, states that:

In any transaction for or with a customer, a member and persons associated with a member shall use reasonable diligence to ascertain the best inter-dealer market for the subject security and buy or sell in such a market so that the resultant price to the customer is as favorable as possible to the customer under prevailing market conditions.

Interpretation

The following interpretation of Rule 2110 has been approved by the Board:

A member firm that accepts and holds an unexecuted limit order from its customer (whether its own customer or a customer of another member) in an *NMS stock or OTC equity*[exchange-listed] security and that continues to trade the subject security for its own account at prices that would satisfy the customer's limit order, without executing that limit order, shall be deemed to have acted in a manner inconsistent with just and equitable principles of trade, in violation of Rule 2110, provided that a member firm may negotiate specific terms and conditions applicable to the acceptance of limit orders only with respect to limit orders that are: (a) for customer accounts that meet the definition of an ''institutional account'' as that term is defined in Rule 3110(c)(4); or (b) 10,000 shares or more, unless such orders are less than $100,000 in value. In the event that a member trades ahead of an unexecuted customer limit order at a price that is better than the unexecuted limit order, such member is required to execute the limit order at the price received by the member or better. Nothing in this interpretation, however, requires members to accept limit orders from any customer.

By rescinding the safe harbor position and adopting this interpretation, NASD wishes to emphasize that members may not trade ahead of their customer limit orders even if the member had in the past fully disclosed the practice to its customers prior to accepting limit orders. NASD believes that, pursuant to Rule 2110, members accepting and holding unexecuted customer limit orders owe certain duties to their customers and the customers of other member firms that may not be overcome or cured with disclosure of trading practices that include trading ahead of the customer's order. The terms and conditions under which institutional account or appropriately sized customer limit orders are accepted must be made clear to customers at the time the order is accepted by the firm so that trading ahead in the firm's market-making capacity does not occur.

[As outlined in NASD Notice to Members 97–57, the minimum amount of price improvement necessary in order for a member to execute an incoming order on a proprietary basis when holding an unexecuted limit order for a Nasdaq security trading in fractions, and not be required to execute the held limit order, is as follows:]

- [If actual spread is greater than 1/16 of a point, a firm must price improve an incoming order by at least a 1/16. For stocks priced under $10 (which are quoted in 1/32 increments), the firm must price improve by at least 1/64.]
- [If actual spread is the minimum quotation increment, a firm must price improve an incoming order by one-half the minimum quotation increment.]

[For Nasdaq securities authorized for trading in decimals pursuant to the Decimals Implementation Plan For the Equities and Options Markets, t]*T*he minimum amount of price improvement necessary in order for a member 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 *greater than or equal to $1.00 that are* 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 less than $1.00 that are at or inside the best inside market, the minimum amount of price improvement required is the lesser of $0.01 or one-half (1/2) of the current inside spread;*

*(3)* For customer limit orders priced outside the best inside market [displayed in Nasdaq], the member must price improve the incoming order by executing the incoming order at a price *at or inside the best inside market for the security; and* [at least equal to the next superior minimum quotation increment in Nasdaq (currently $0.01)]

*(4) For customer limit orders in securities for which there is no published inside market, the minimum amount of price improvement required is $0.01.*

NASD also wishes to emphasize that all members accepting customer limit orders owe those customers duties of ''best execution'' regardless of whether the orders are executed through the member or sent to another member for execution. As set out above, the Best Execution Rule requires members to use reasonable diligence to ascertain the best inter-dealer market for the security and buy or sell in such a market so that the price to the customer is as favorable as possible under prevailing market conditions. NASD emphasizes that order entry firms should continue to monitor routinely the handling of their customers' limit orders regarding the quality of the execution received.

(b) through (c) No change.

* * * * *

6541. [Limit Order Protection] *Reserved.*

[(a) Members shall be prohibited from ''trading ahead'' of customer limit orders that a member accepts in securities quoted on the OTCBB. Members handling customer limit orders, whether received from their own customers or from another member, are prohibited from trading at prices equal or superior to that of the customer limit order without executing the limit order. Members are under no obligation to accept limit orders from any customer.]

[(b) Members may avoid the obligation specified in paragraph (a) through the provision of price improvement. If a customer limit order is priced at or inside the current inside spread, however, the price improvement

† For purposes of the operation of certain [Nasdaq] transaction and quotation reporting systems and facilities during the period from 4 p.m. to 6:30 p.m. Eastern Time, members may generally limit the life of a customer limit order to the period of 9:30 a.m. to 4 p.m. Eastern Time. If a customer does not formally assent (''opt-in'') to processing of the customer's limit order(s) during the extended hourse period commencing after the normal close of the [Nasdaq] market, limit order proteciton will not apply to that customer's order(s).

must be for a minimum of the lesser of $0.01 or one-half (½) of the current inside spread. For purposes of this rule, the inside spread shall be defined as the difference between the best reasonably available bid and offer in the subject security.]

[(c) Notwithstanding subparagraph (a) of this rule, a member may negotiate specific terms and conditions applicable to the acceptance of limit orders only with respect to such orders that are:]

[(1) for customer accounts that meet the definition of an ''institutional account'' as that term is defined in Rule 3110(c)(4); or]

[(2) for 10,000 shares or more, and greater than $20,000 in value.]

[(d) Contemporaneous trades]

[A member that trades through a held limit order must execute such limit order contemporaneously, or as soon as practicable, but in no case later than five minutes after the member has traded at a price more favorable than the customer's price.]

[(e) Application]

[(1) This rule shall apply, regardless of whether the subject security is additionally quoted in a separate quotation medium.]

[(2) This rule shall apply from 9:30 a.m. to 4 p.m. Eastern Time.]

* * * * *

## 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 Interpretive Material (IM) 2110–2, Trading Ahead of Customer Limit Order (''IM–2110–2'') (commonly referred to as the ''Manning Rule'') generally prohibits a NASD member from trading for its own account in an exchange-listed security at a price that is equal to or better than an unexecuted customer limit order in that security, unless the member immediately thereafter executes the customer limit order at the price at which it traded for its own account or better. The legal underpinnings for the Manning Rule are a member's basic fiduciary obligations and the requirement that a member must, in the conduct of its business, ''observe high standards of commercial honor and just and equitable principles of trade.'' [5]

IM–2110–2 currently applies to exchange-listed securities,[6] but does not apply to OTC equity securities. NASD Rule 6541, however, extends the general principles of the Manning Rule to a subset of OTC equity securities, those that are quoted on the OTC Bulletin Board (''OTCBB''), but differs from IM–2110–2 in several respects, which are described in more detail below.

NASD is proposing to expand the scope of IM–2110–2 and any interpretive guidance thereunder to include OTC equity securities.[7] NASD believes that customer limit orders in OTC equity securities should be subject to the same order handling and customer protection requirements under the Manning Rule as exchange-listed securities. Given this proposed expansion of IM–2110–2 to OTC equity securities, NASD also is proposing to repeal NASD Rule 6541. As noted above, although NASD Rule 6541 is substantially similar to the Manning Rule, it differs in its application in several ways. NASD believes that these distinctions in application no longer make sense and that having uniform limit order protection requirements across market sectors is appropriate. The most significant differences between IM–2110–2 and NASD Rule 6541 and any related proposed changes to IM–2110–2 are summarized below.

First, both IM–2110–2 and NASD Rule 6541 provide that a member is not deemed to have traded ahead of a customer limit order if the member provides a contemporaneous execution of the customer's order. For the purposes of IM–2110–2, contemporaneous has been interpreted to require execution as soon as possible, but absent reasonable and documented justification, within one minute.[8] In contrast, NASD Rule 6541(d) provides a longer maximum time limit of five minutes, within which an execution of a customer order will be deemed to be contemporaneous with an execution for a member firm's account. The five-minute standard was intended to be an outside limit, absent extraordinary circumstances, and not a normal practice.[9] NASD believes that most customer limit orders are filled within a period shorter than five minutes following a proprietary trade that triggers the obligation, and despite the more manual nature of the unlisted market, one minute is not an unreasonably short time to fill a customer order.

Second, both IM–2110–2 and NASD Rule 6541 permit members to negotiate terms and conditions on the acceptance of certain large-sized limit orders. Such terms and conditions would permit the member to continue to trade alongside of, or ahead of, the limit order, if the customer agrees. NASD Rule 6541 applies a lower threshold requirement on the types of orders for which a member can negotiate such terms and conditions. Specifically, NASD Rule 6541(c) only requires that an order be 10,000 shares or more and greater than $20,000 in value, while IM–2110–2 requires that an order be 10,000 shares or more and greater than $100,000 in value. This lower threshold for OTCBB securities was established due to the lower average dollar amount of trades in OTCBB securities relative to trades in exchange-listed securities.

NASD believes the higher value threshold requirement under IM–2110–2 should be applied to all securities uniformly. The value threshold of an order is intended to be an objective criteria upon which an assumption can

[5] *See* NASD Rule 2110.

[6] On June 30, 2006, the Commission approved SR–NASD–2005–087, which amended certain NASD rules to reflect separation of The Nasdaq Stock Market, Inc. from NASD upon the operation of the Nasdaq Stock Market LLC as a national securities exchange. *See* Securities Exchange Act Release No. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006) (File No. SR–NASD–2005–087). SR–NASD–2005–087 became effective on August 1, 2006, the date upon which Nasdaq began operation as an exchange for Nasdaq-listed securities. As part of SR–NASD–2005–087, the Commission approved amendments to IM–2110–2 to reflect Nasdaq's approval and operation as a national securities exchange.

The Commission approved further amendments to IM–2110–2 to codify NASD's existing position that IM–2110–2 applies to all members, whether acting as a market maker or not. These amendments became effective on April 14, 2006. *See* Securities Exchange Act Release No. 53653 (April 14, 2006), 71 FR 20429 (April 20, 2006) (File No. SR–NASD–2006–35).

The Commission also approved the expansion of IM–2110–2, which previously applied to Nasdaq securities, to exchange-listed securities. *See* Securities Exchange Act Release No. 52210 (August 4, 2005), 70 FR 46897 (August 11, 2005) (File No. SR–NASD–2004–089). *See also* NASD Notice to Members 05–64 (October 2005) (announcing Commission approval of the amendments to IM–2110–2, which became effective on January 2, 2006).

[7] NASD states that the term ''OTC equity securities'' does not include options. *See* NASD Rule 6610(d) (defining ''OTC Equity Security'' as any non-exchange-listed security and certain exchange-listed securities that do not otherwise qualify for real-time trade reporting).

[8] *See* NASD Notices to Members 95–67 (August 1995) and 98–78 (September 1998).

[9] *See* NASD Notice to Members 01–46 (July 2001).

be made that the order involves a best-efforts commitment and the commitment of substantial capital on the part of the member, and therefore, it is appropriate for the member to be able to place terms and conditions on the acceptance of that order. As such, NASD believes that it is the value and size of the customer order that is of significance in making this determination, not the average price of securities in a particular market sector.

Third, IM–2110–2 excludes limit orders that are marketable at the time of receipt (marketable limit orders), whereas the requirements under NASD Rule 6541 apply to such orders. This exclusion to IM–2110–2 for marketable limit orders recognizes that marketable limit orders and market orders are functionally equivalent and, thus, customers placing marketable limit orders should not have an unwarranted advantage over market orders. If marketable limit orders were not excluded from the Manning Rule, the Rule's operation could have the unintended consequence of providing marketable limit orders with execution priority over market orders placed at the same time or prior to the marketable limit orders (commonly referred to as ''jumping the queue'').[10] As such, consistent with the current application of IM–2110–2, NASD staff believes that continuing to exclude marketable limit orders from the application of the Manning Rule is appropriate.[11]

Fourth, both IM–2110–2 and NASD Rule 6541 apply only during certain specified time periods. Specifically, IM–2110–2 is applicable from 9:30 a.m. to 6:30 p.m. Eastern Time,[12] whereas NASD Rule 6541 applies only during normal market hours of 9:30 a.m. to 4:00 p.m. Eastern Time. This difference in application for OTCBB securities was established due to the fact that, although the OTCBB service is available from 7:30 a.m. to 6:30 p.m., prices on the OTCBB are required to be firm only during the normal market hours.[13] Given that in some OTC equity securities, quoting of the security may not exist at a given time, NASD believes that linking this requirement to whether quotes in the security are required to be firm is not appropriate. As such, NASD believes the time period under the Manning Rule should be applied to all securities uniformly.

Lastly, both IM–2110–2 and NASD Rule 6541 prescribe a minimum level of price-improvement that a member must provide to trade ahead of an unexecuted customer limit order. Specifically, the price-improvement standard currently set forth in IM–2110–2 provides that, where a member is holding a customer limit order priced at or inside the best inside market displayed in Nasdaq, the member may execute an incoming order on a proprietary basis without being obligated to execute the customer limit order if the member executes the incoming order at least $0.01 better than the price of the customer limit order. Further, if the customer limit order is priced outside the best inside market displayed in Nasdaq, then the member must execute the incoming order at the next superior minimum quotation increment permitted by Nasdaq (currently $0.01). In contrast, NASD Rule 6541 provides that if the customer limit order is priced at or inside the current inside spread,[14] the price improvement is a minimum of the lesser of $0.01 or one-half (1/2) of the current inside spread.

On June 9, 2005, the Commission adopted Regulation NMS that, among other things, established a minimum price variation (''MPV'') standard for NMS stocks.[15] Specifically, Rule 612 of Regulation NMS[16] generally prohibits market participants from accepting, ranking, or displaying orders, quotations, or indications of interest in a pricing increment smaller than a penny, except for orders, quotations, or indications of interest that are priced at less than $1.00 per share. If the order, quotation, or indication of interest is priced less than $1.00 per share, the minimum pricing increment is $0.0001.

Given the implementation of Rule 612 of Regulation NMS,[17] NASD is proposing to amend the price-improvement provisions in IM–2110–2 to revise and make uniform for all equity securities the minimum price-improvement standards as follows. For customer limit orders priced greater than or equal to $1.00 that are at or inside the best inside market, the minimum amount of price improvement required would be $0.01. For customer limit orders priced less than $1.00 that are at or inside the best inside market, the minimum amount of price improvement required would be the lesser of $0.01 or one-half (½) of the current inside spread. For customer limit orders priced outside the best inside market, the member would be required to execute the incoming order at a price at or inside the best inside market for the security. Lastly, for customer limit orders in securities for which there is no published inside market, the minimum amount of price improvement required is $0.01. NASD believes these amendments are necessary to support the new pricing formats and to have uniform price improvement standards across market sectors.

In addition, given that the definition of an ''NMS stock'' effectively covers stocks listed on a national securities exchange, NASD is proposing to replace the term ''exchange-listed security'' with the term ''NMS stock.''[18]

[10] *See* Securities Exchange Act Release No. 41990 (October 7, 1999), 64 FR 5600 (October 15, 1999) (File No. SR–NASD–99–44).

[11] Recently-approved NASD Rule 2111 governs trading ahead of marketable limit orders in Nasdaq and exchange-listed securities. Although NASD Rule 2111 does not apply to OTC equity securities, it is consistent with a member's best execution obligations to execute marketable limit orders fully and promptly. NASD Rule 2111 became effective on January 9, 2006. *See* Securities Exchange Act Release No. 52226 (August 9, 2005), 70 FR 48219 (August 16, 2005) (File No. SR–NASD–2004–045). *See also* NASD Notice to Members 05–69 (October 2005).

[12] A member may generally limit the life of a customer limit order to the period of 9:30 a.m. to 4 p.m. Eastern Time. If a customer does not formally assent to processing of the customer's limit order(s) during the extended hours period commencing after the normal close of the market, limit order protection will not apply to that customer's order. *See* IM–2110–2 (footnote 1).

[13] *See* NASD Notice to Members 01–46 (July 2001).

[14] For purposes of NASD Rule 6541, the inside spread is defined as the difference between the best reasonably available bid and offer in the subject security. The determination of what is ''reasonably available'' is largely factual and best determined on a case-by-case basis. *See* NASD Notice to Members 01–46 (July 2001).

[15] Given that Regulation NMS only applies to national market system (''NMS'') securities and NASD believes that the same potential harms associated with sub-penny quoting that exist in NMS securities also exist in OTC equity securities, NASD filed a proposed rule change that would prohibit members from displaying, ranking, or accepting a bid or offer, an order, or an indication of interest in any OTC equity securities in any quotation medium priced in an increment smaller than $0.01 if such bid or offer, order, or indication of interest is priced equal to or greater than $1.00 per share. Members also would be prohibited from displaying, ranking, or accepting a bid, offer, an order, or an indication of interest in any OTC equity security priced in an increment smaller than $0.0001 if such bid or offer, order, or indication of interest is priced equal to or greater than $0.01 per share and less than $1.00 per share. *See* Securities Exchange Act Release Nos. 52280 (August 17, 2005), 70 FR 49959 (August 25, 2005) (File No. SR-NASD–2005–095); and 53024 (December 27, 2005), 71 FR 159 (January 3, 2006) (File No. SR–NASD–2005–095).

[16] 17 CFR 242.612.

[17] The compliance date for Rule 612 of Regulation NMS was January 31, 2006. *See* Securities Exchange Act Release No. 52196 (August 2, 2005), 70 FR 45529 (August 8, 2005) (File No. S7–10–04) (extending the compliance date for Rule 612 of Regulation NMS).

[18] The term ''NMS stock'' is defined in Rule 600(b)(47) of Regulation NMS as any NMS security other than an option. *See* 17 CFR 242.600(b)(47). The term ''NMS security'' is defined in Rule 600(b)(46) of Regulation NMS as any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options. *See* 17 CFR

Finally, IM–2110–2 currently contains provisions that prescribe the minimum level of price-improvement for securities trading in non-decimalized fractions. Given that equities no longer trade in fractions, NASD proposes to delete such fractional references as part of this proposed rule change.

As a result of the proposed changes described above, NASD is proposing to apply limit order protection requirements uniformly to all equity securities by extending the scope of the Manning Rule to OTC equity securities.[19] In doing so, NASD also is proposing to repeal NASD Rule 6541, as those requirements would be subsumed in the proposed expansion of the Manning Rule.

NASD intends to announce the effective date of the proposed rule change in a *Notice to Members* to be published no later than 60 days following Commission approval. In recognition of the technological and systems changes the proposed rule change may require, NASD proposed to set the effective date at 90 days following publication of the Notice to Members announcing Commission approval.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[20] 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 the proposed rule change will improve treatment of customer limit orders and promote investor protection.

*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.

242.600(b)(46). As such, the term ''NMS stock,'' for purposes of IM–2110–2, would include, among other things, exchange traded funds (ETFs).

[19] In addition to the differences between IM–2110–2 and NASD Rule 6541 described above, the Commission also approved amendments to IM–2110–2 that generally require a member that has traded ahead of a customer limit order at a price that is more favorable than the customer limit order price, to pass along that price improvement to the customer limit order. This requirement currently does not apply under NASD Rule 6541. *See* Securities Exchange Act Release No. 52210 (August 4, 2005), 70 FR 46897 (August 11, 2005) (File No. SR–NASD–2004–089). *See* also NASD Notice to Members 05–64 (October 2005).

[20] 15 U.S.C. 78*o*–3(b)(6).

*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 by NASD.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which NASD consents, the Commission will:

(A) by order approve such proposed rule change, as amended, or

(B) institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act.

At the NASD's request, the Commission also is seeking comment on whether 90 days from the publication of NASD's *Notice to Members* provides adequate time for implementation of the proposal or whether additional implementation time may be needed and the reasons therefor. 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–2005–146 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–NASD–2005–146. 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 File Number SR–NASD–2005–146 and should be submitted on or before November 30, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

**Nancy M. Morris,**

*Secretary.*

[FR Doc. E6–18977 Filed 11–8–06; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–54692; File No. SR–NSX–2006–12]**

## Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Implement a Fee Schedule Under Rule 16.1(a) and 16.1(c) for Transactions Executed Through the Intermarket Trading System Plan and/or the Plan for the Purpose of Creating and Operating an Intermarket Communications Linkage

November 2, 2006.

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 October 2, 2006, the National Stock Exchange, Inc.℠ (''NSX'' or ''Exchange'') 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 NSX. NSX submitted the proposed rule change

[21] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.