

exchanges, except Nasdaq,<sup>27</sup> may list securities using three-character ticker symbols.<sup>28</sup> Unlike one-character symbols, three-character symbols are not associated by investors with any one market. The Commission also notes that the transfer of securities listings with three-character ticker symbols typically occur among other exchanges without any discernable confusion or disruption to the marketplace.<sup>29</sup>

Another commenter asserted that three-character symbols are exclusive indicators of securities trading on NYSE's and Amex's specialist-based markets, and that it would cause confusion if such symbols were used on Nasdaq's dealer market.<sup>30</sup> However, as the Commission noted above, exchanges other than NYSE and Amex may list securities with three-character symbols.<sup>31</sup>

### C. National Market System Plan Process

Some of the commenters have expressed concern that the proposed rule change would disrupt or circumvent ongoing efforts by the SROs to develop a national market system plan.<sup>32</sup> The Commission recently received two proposed national market system plans for the selection and reservation of ticker symbols submitted by two separate groups of SROs.<sup>33</sup> The Commission is currently considering these plans and intends to publish the proposed plans for public comment.<sup>34</sup>

<sup>27</sup> With the exception of the transfer of the DFC listing, Nasdaq currently only lists securities of companies using four- or five-character symbols. See *supra* note 7 and accompanying text.

<sup>28</sup> For example, as noted in the Angel Letter, the NAIC Growth Fund lists on the Chicago Stock Exchange, Inc. with the ticker symbol "GRF".

<sup>29</sup> Nasdaq has also represented that its recent listing of DFC occurred without any trading problems. The Amex Letter tacitly agreed with this view, but argued that the lack of trading problems associated with DFC is not the best proxy for other companies that may transfer their listings to Nasdaq because it believed that DFC is a microcap company. The Nasdaq Response Letter, however, disputed this argument and the Amex Letter's labeling of DFC as a "microcap company," citing the fact that DFC has a market capitalization of over \$230 million, a figure that it contends is nearly triple the \$67 million market capitalization of the median Amex issuer.

<sup>30</sup> See Amex Letter.

<sup>31</sup> For example, NYSE Arca lists three-character symbols. See *also supra* note 27.

<sup>32</sup> See Ward Letter, NYSE Letter, Amex Letter, and RPM Letter.

<sup>33</sup> See Proposed NMS Plan for the Selection and Reservation of Securities Symbols by the Chicago Stock Exchange, Inc., Nasdaq, National Association of Securities Dealers, Inc., National Stock Exchange, Inc. and Philadelphia Stock Exchange, Inc. (available at <http://www.sec.gov/rules/sro/4-533revised.pdf>) and Proposed NMS Plan for the Selection and Reservation of Securities Symbols by Amex, NYSE and NYSE Arca (available at <http://www.sec.gov/rules/sro/4-534.pdf>).

<sup>34</sup> See Press Release, Commission, SEC Announces Process for Proposals on Securities

The Commission believes that its approval of the proposed rule change is independent of its consideration of these plans. The Commission under Rule 608(b)(2) may declare effective any national market system plan or plans for the selection and reservation of ticker symbols that is consistent with the requirements of the Act. Participants in any such plan would be required to comply with its requirements, which could necessitate changes to SRO rules.<sup>35</sup>

### D. Symbol Shortage

Two commenters argued that the proposal could create a shortage of available three-character ticker symbols.<sup>36</sup> Nasdaq's proposal, however, would only permit it to list securities with three-character ticker symbols when such issuer transfers its listing from another exchange; the proposal would not permit Nasdaq to list new securities with three-character ticker symbols. The Commission, therefore, does not believe Nasdaq's proposal would have a negative impact on the availability of three-character ticker symbols.

### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>37</sup> that the proposed rule change (SR-NASDAQ-2007-031) be, and hereby is, approved.

By the Commission.

**Florence E. Harmon,**

*Deputy Secretary.*

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**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56029; File No. SR-NASD-2007-038]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the Customer and the Industry Codes of Arbitration Procedure To Clarify NASD's Jurisdiction Concerning Members of Other Self-Regulatory Organizations

July 9, 2007.

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 June 13, 2007 the National Association of Securities Dealers, Inc. ("NASD"), through its wholly owned subsidiary, NASD Dispute Resolution, Inc. ("NASD Dispute Resolution") 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 substantially prepared by NASD Dispute Resolution. NASD has designated the proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization under Section 19(b)(3)(A)(i) of the Act<sup>3</sup> and Rule 19b-4(f)(1) thereunder,<sup>4</sup> 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.

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

NASD Dispute Resolution is proposing to amend NASD Rules 12100 and 13100 of the NASD Codes of Arbitration Procedure for Customer Disputes ("Customer Code") and for Industry Disputes ("Industry Code") (together, the "Codes") to clarify that, for purposes of the Codes, the term "member" includes any broker or dealer admitted to membership in a self-regulatory organization that, with NASD consent, has required its members to arbitrate pursuant to the Codes and/or to be treated as members of NASD for purposes of the Codes. Below is the text

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

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

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

<sup>4</sup> 17 CFR 240.19b-4(f)(1).

"Ticker" Symbols (April 5, 2007) (available at <http://www.sec.gov/news/press/2007/2007-63.htm>).

<sup>35</sup> See 15 U.S.C. 78k-1(a)(3) and 17 CFR 242.608(b) and (c). The NYSE Letter referenced a "Symbol Reservation Plan," which it stated has operated to allocate and reserve symbols for over 30 years. The Commission notes, however, that no such plan has been approved by the Commission.

<sup>36</sup> See NYSE Letter and Amex Letter.

<sup>37</sup> 15 U.S.C. 78s(b)(2).

of the proposed rule change. Proposed new language is in italics.

\* \* \* \* \*

#### Customer Code

##### 12100. Definitions

Unless otherwise defined in the Code, terms used in the Code and interpretive material, if defined in the NASD By-Laws, shall have the meaning as defined in the NASD By-Laws.

Paragraphs (a) through (n) unchanged.

##### (o) Member

For purposes of the Code, the term "member" means any broker or dealer admitted to membership in NASD, whether or not the membership has been terminated or cancelled; *and any broker or dealer admitted to membership in a self-regulatory organization that, with NASD consent, has required its members to arbitrate pursuant to the Code and/or to be treated as members of NASD for purposes of the Code, whether or not the membership has been terminated or cancelled.*

Remainder unchanged.

\* \* \* \* \*

#### Industry Code

##### 13100. Definitions

Unless otherwise defined in the Code, terms used in the Code and interpretive material, if defined in the NASD By-Laws, shall have the meaning as defined in the NASD By-Laws.

Paragraphs (a) through (n) unchanged.

##### (o) Member

For purposes of the Code, the term "member" means any broker or dealer admitted to membership in NASD, whether or not the membership has been terminated or cancelled; *and any broker or dealer admitted to membership in a self-regulatory organization that, with NASD consent, has required its members to arbitrate pursuant to the Code and/or to be treated as members of NASD for purposes of the Code, whether or not the membership has been terminated or cancelled.*

Remainder unchanged.

\* \* \* \* \*

## 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 is amending Rule 12100(o) of its Customer Code and Rule 13100(o) of its Industry Code to clarify that, for purposes of the Codes, the term "member" includes any broker or dealer admitted to membership in a self-regulatory organization that, with NASD consent, has required its members to arbitrate pursuant to the Codes and/or to be treated as members of NASD for purposes of the Codes. Such members would, like NASD members, be treated as members whether or not their membership has been terminated or cancelled.

The proposed rule change will codify current practice under which NASD has assumed, by agreement, the arbitration and mediation functions of several self-regulatory organizations that closed their dispute resolution forums.<sup>5</sup>

#### 2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>6</sup> which requires, among other things, that NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to remove impediments to and perfect the mechanism of a free and open market

<sup>5</sup> The Codes apply not only to NASD members and their associated persons, but also to members and associated persons of the Municipal Securities Rulemaking Board ("MSRB"), the Philadelphia Stock Exchange ("Phlx"), the American Stock Exchange ("Amex"), International Securities Exchange ("ISE"), and The Nasdaq Stock Market LLC ("Nasdaq"), pursuant to agreements under which members of those self-regulatory organizations for which the NASD administers the arbitration process will be treated as "members" of the NASD for purposes of the Codes. See Securities Exchange Act Release No. 39378 (Dec. 1, 1997), 62 FR 64417 (Dec. 5, 1997) (SR-MSRB-97-4) (MSRB approval order); Securities Exchange Act Release No. 40517 (Oct. 1, 1998), 63 FR 54177 (Oct. 8, 1998) (SR-Phlx-98-28) (Phlx approval order); Securities Exchange Act Release No. 40622 (Oct. 30, 1998), 63 FR 59819 (Nov. 5, 1998) (SR-Amex-98-32) (Amex approval order); Securities Exchange Act Release 45094 (Nov. 21, 2001), 66 FR 60230 (Dec. 3, 2001) (File No. SR-ISE-00-17) (ISE approval order); and Securities Exchange Act Release No. 53128 (Jan. 13, 2006), 71 FR 3550 (Jan. 23, 2006) (File No. 10-131) (Nasdaq approval order). See also Securities Exchange Act Release No. 55818 (May 25, 2007), 72 FR 30898 (June 4, 2007) (SR-NYSE-2007-048) (the New York Stock Exchange LLC's proposed rule change to provide guidance regarding new and pending arbitrations in light of the consolidation of NYSE Regulation's arbitration department with that of NASD DisputeResolution.).

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

and a national market system, 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 is consistent with the provisions of the Act noted above because it will make explicit NASD's jurisdiction with respect to members of other self-regulatory organizations that, with NASD consent, have required their members to arbitrate pursuant to the Codes and/or to be treated as members of NASD for purposes of the Codes. The proposed rule change also will clarify that one set of arbitration rules and administration procedures will apply to these other self-regulatory organizations.

### (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 by NASD.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act and subparagraph (f)(1) of Rule 19b-4 thereunder, because it constitutes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule.<sup>7</sup> 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:

<sup>7</sup> 17 CFR 240.19b-4(f)(1).

*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-2007-038 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-2007-038. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. 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-2007-038 and should be submitted on or before August 3, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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<sup>8</sup> 17 CFR 200.30-3(a)(12).

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-56024; File No. SR-NYSE-2007-61]

**Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Rule 97, Limitation on Members' Trading Because of Block Positioning**

July 6, 2007.

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 July 6, 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 substantially prepared by the Exchange. The Exchange has designated the proposed rule change as a "non-controversial" rule change pursuant to section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposed rule change 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 proposes to amend NYSE Rule 97 to permit members or member organizations that hold long positions as a result of block transactions with customers to send proprietary buy intermarket sweep orders ("ISOs") in the course of facilitating another customer's buy or sell order. The text of the proposed rule change is available on the NYSE's Web site (<http://www.nyse.com>), at the NYSE, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange 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

The Exchange is proposing to amend NYSE Rule 97 in order to permit member organizations that hold long positions as a result of a block transaction with a customer to execute proprietary ISOs on a plus tick during the last 20 minutes of the trading day if they are required under Regulation NMS<sup>5</sup> to send a buy ISO in the course of facilitating another customer's buy or sell order during that time period.

NYSE Rule 97 governs block facilitation transactions by NYSE member organizations on behalf of customers. The rule states that if, as a result of facilitating one or more customer sell order(s) in a stock during the trading day, a member organization ends up holding a long position in the stock in a proprietary account, then during the last 20 minutes of trading, the member organization is prohibited from buying such stock as principal on a "plus tick" if the transaction would take place at a price above the lowest price at which it acquired the long position. The Exchange states that the underlying purpose of Rule 97 was to address concerns that a member firm might engage in manipulative practices by attempting to "mark-up" the price of a stock to enable the position acquired in the course of block positioning to be liquidated at a profit, or to maintain the market at the price at which the position was acquired.

Under Regulation NMS, member organizations may not trade through a protected quotation in another market, but may satisfy their obligation to the protected order by sending ISOs to the protected market at the same time that they send orders to the inferior-priced market. Depending on the size of the block that is being facilitated and the size of the protected quotes, block customers may—pursuant to Rules 600(b)(30)(ii) and 611(b)(6) of Regulation NMS<sup>6</sup>—decline to take and process better priced executions that result from the sending of the ISO orders. This may occur, for example, where the ISO amounts are de minimis in relation to the size of the block being facilitated. In those situations, the firm would be required—based on the customer's instructions—to print the

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

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

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

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

<sup>5</sup> 17 CFR 242.600 *et seq.*

<sup>6</sup> 17 CFR 242.600(b)(30)(ii) and 17 CFR 242.611(b)(6).