

Proposed Rule Change by National Association of Securities Dealers  
Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

<b>Initial</b> <input checked="" type="checkbox"/>	<b>Amendment</b> <input type="checkbox"/>	<b>Withdrawal</b> <input type="checkbox"/>	<b>Section 19(b)(2)</b> <input checked="" type="checkbox"/>	<b>Section 19(b)(3)(A)</b> <input type="checkbox"/>	<b>Section 19(b)(3)(B)</b> <input type="checkbox"/>
			Rule		
<b>Pilot</b> <input type="checkbox"/>	<b>Extension of Time Period for Commission Action</b> <input type="checkbox"/>	<b>Date Expires</b> <input type="text"/>	<input type="checkbox"/> 19b-4(f)(1)	<input type="checkbox"/> 19b-4(f)(4)	
			<input type="checkbox"/> 19b-4(f)(2)	<input type="checkbox"/> 19b-4(f)(5)	
			<input type="checkbox"/> 19b-4(f)(3)	<input type="checkbox"/> 19b-4(f)(6)	

Exhibit 2 Sent As Paper Document <input type="checkbox"/>	Exhibit 3 Sent As Paper Document <input type="checkbox"/>
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**Description**  
Provide a brief description of the proposed rule change (limit 250 characters).

Proposed Rule Change to Amend NASD Rule 7001E to Increase Percentage of Market Data Revenue Shared with NASD/NYSE TRF Participants

**Contact Information**  
Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name	<input type="text" value="Lisa"/>	Last Name	<input type="text" value="Horrigan"/>
Title	<input type="text" value="Associate General Counsel"/>		
E-mail	<input type="text" value="lisa.horrigan@nasd.com"/>		
Telephone	<input type="text" value="(202) 728-8190"/>	Fax	<input type="text" value="(202) 728-8264"/>

**Signature**  
Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date	<input type="text" value="04/24/2007"/>
By	<input type="text" value="Stephanie Dumont"/>
	(Name)
	<input type="text" value="Vice President and Associate General Counsel"/>
	(Title)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

**Form 19b-4 Information**

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change**

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

**1. Text of Proposed Rule Change**

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> the National Association of Securities Dealers, Inc. (“NASD”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) this proposed rule change to amend NASD Rule 7001E (Securities Transaction Credit) to increase to 100% the percentage of New York Stock Exchange (“Tape A”), American Stock Exchange (“Tape B”) and Nasdaq Exchange (“Tape C”) revenue shared with NASD members reporting trades to the NASD/NYSE Trade Reporting Facility (the “NASD/NYSE TRF”).

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

\* \* \* \* \*

**7000E. CHARGES FOR NASD/NYSE TRADE REPORTING FACILITY  
SERVICES**

**7001E. Securities Transaction Credit**

NASD members that trade securities listed on the NYSE (“Tape A”), Amex (“Tape B”), or Nasdaq (“Tape C”) in over-the-counter transactions reported to the NASD/NYSE Trade Reporting Facility may receive from the NASD/NYSE Trade Reporting Facility transaction credits based on the transactions attributed to them. A transaction is attributed to a member if the member is identified as the executing party in a trade report submitted to the NASD/NYSE Trade Reporting Facility that the

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

NASD/NYSE Trade Reporting Facility submits to the Consolidated Tape Association or the Nasdaq Securities Information Processor. An NASD member may earn credits from any of three pools maintained by the NASD/NYSE Trade Reporting Facility. The Tape A, Tape B, and Tape C pools represent [50]100% of the gross revenue paid by the Consolidated Tape Association or the Nasdaq Securities Information Processor with respect to the NASD/NYSE Trade Reporting Facility for Tape A, Tape B, and Tape C transactions. An NASD member may earn credits from the pools according to the pro rata share of revenue attributable to over-the-counter transactions reported to the NASD/NYSE Trade Reporting Facility by the member in Tape A, Tape B, and Tape C for each calendar quarter. To the extent that Tape A, Tape B or Tape C revenue is subject to any adjustment, credits provided may be adjusted accordingly.

\* \* \* \* \*

(b) Not applicable.

(c) Not applicable.

**2. Procedures of the Self-Regulatory Organization**

The proposed rule change was approved and authorized for filing with the SEC by the NASD/NYSE Trade Reporting Facility LLC Board (the “NASD/NYSE TRF Board”) by Unanimous Written Consent dated April 3, 2007. The proposed rule change was approved and authorized for filing with the SEC by the Board of Governors of NASD (the “Board”) pursuant to a delegation of authority granted by the Board at its meeting on April 19, 2007 to NASD staff to file, without further specific Board authorization, proposed rule changes to adjust the percentage of market data revenue shared by NASD Trade Reporting Facilities, as approved by the respective Boards of the NASD Trade

Reporting Facilities. Such delegation of authority by the Board is based on the conclusion that the proposed transaction credit program is not clearly inconsistent with the provisions of the Act. No other action by NASD is necessary for the filing of the proposed rule change. Section 1(a)(ii) of Article VII of the NASD By-Laws permits the Board of Governors of NASD to adopt NASD Rules without recourse to the membership for approval.

NASD is proposing that the effective date of the proposed rule change shall be retroactive to April 18, 2007, the date on which the NASD/NYSE TRF commenced operation.

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

(a) Purpose

Background

On February 1, 2007, NASD filed for immediate effectiveness a proposed rule change relating to the establishment of the NASD/NYSE TRF.<sup>2</sup> The NASD/NYSE TRF provides NASD members another mechanism for reporting locked-in transactions in exchange-listed securities effected otherwise than on an exchange.

In connection with the establishment of the NASD/NYSE TRF, NASD and NYSE Market, Inc. ("NYSE") entered into the Limited Liability Company Agreement of NASD/NYSE Trade Reporting Facility LLC ("the NASD/NYSE TRF LLC Agreement"), a copy of which appears in the NASD Manual. Under the NASD/NYSE TRF LLC

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<sup>2</sup> See Securities Exchange Act Release No. 55325 (February 21, 2007), 72 FR 8820 (February 27, 2007) (Notice of Filing and Immediate Effectiveness of SR-NASD-2007-011). The NASD/NYSE TRF commenced operation on April 18, 2007.

Agreement, NASD, the “SRO Member,” has sole regulatory responsibility for the NASD/NYSE TRF. NYSE, the “Business Member,” is primarily responsible for the management of the NASD/NYSE TRF’s business affairs to the extent those activities are not inconsistent with the regulatory and oversight functions of NASD. Additionally, the Business Member is obligated to pay the cost of regulation and is entitled to the profits and losses, if any, derived from the operation of the NASD/NYSE TRF.

On March 21, 2007, NASD filed a proposed rule change for immediate effectiveness to adopt a new NASD Rule 7000E Series relating to fees and credits applicable to the NASD/NYSE TRF.<sup>3</sup> Pursuant to NASD Rule 7001E, NASD members reporting trades in Tape A, Tape B and Tape C securities to the NASD/NYSE TRF currently receive a 50% *pro rata* credit on gross market data revenue earned by the NASD/NYSE TRF. “Gross revenue” is the revenue received by the NASD/NYSE TRF from the three tape associations after the tape associations deduct allocated support costs and unincorporated business costs.

#### Proposal to Increase Securities Transaction Credit

NASD is proposing to amend Rule 7001E to increase from 50% to 100% the percentage of market data revenue shared with members under the securities transaction credit program. Thus, NASD members reporting trades in Tape A, Tape B and Tape C stocks to the NASD/NYSE TRF will receive a 100% *pro rata* credit on gross market data revenue earned by the NASD/NYSE TRF.

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<sup>3</sup> See Securities Exchange Act Release No. 55526 (March 26, 2007), 72 FR 15739 (April 2, 2007) (Notice of Filing and Immediate Effectiveness of SR-NASD-2007-025).

The NYSE, as the Business Member under the NASD/NYSE TRF LLC Agreement, has determined that the proposed increase in the percentage of market data revenue shared with NASD/NYSE TRF participants is necessary for competitive reasons. The NYSE believes that, as a new and late entrant to the OTC trade reporting arena, competitive pricing can differentiate its product offering. Additionally, the proposed increase would be consistent with the position of the NYSE that the economic benefits of off-exchange trades should not accrue to exchanges.<sup>4</sup> The NYSE has indicated that because there are currently no fees for reporting trades to the NASD/NYSE TRF, the NYSE will fund regulatory costs associated with the NASD/NYSE TRF from NYSE general revenues.

As noted in Item 2 of this filing, NASD is proposing that the effective date of the proposed rule change shall be retroactive to April 18, 2007, the date on which the NASD/NYSE TRF commenced operation.

(b) Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,<sup>5</sup> in general, and with Section 15A(b)(5) of the Act,<sup>6</sup> in particular, which requires, among other things, that NASD rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons

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<sup>4</sup> See Letter dated April 27, 2006 from Mr. John A. Thain, Chief Executive Officer, NYSE Group, to Chairman Cox, SEC. In that letter, the NYSE also stated that “Since dealer-internalized trades do not contribute directly to price discovery, the ideal resolution would be to remove such trades from the revenue sharing formula.”

<sup>5</sup> 15 U.S.C. 78o-3.

<sup>6</sup> 15 U.S.C. 78o-3(b)(5).

using any facility or system that NASD operates or controls. NASD believes that the proposed rule change is a reasonable and equitable credit structure in that it will be applied uniformly among members that participate in the NASD/NYSE TRF and that the NYSE has indicated that all regulatory costs owed by the NYSE as the Business Member related to the NASD/NYSE TRF will be funded by NYSE general revenues.

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

NASD, as the SRO Member, is not in a position to assess directly the burden, if any, that the proposed rule change may have on competition. The NYSE, as the Business Member, has indicated that it 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.

**5. 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. Extension of Time Period for Commission Action**

NASD does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.<sup>7</sup>

**7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)**

Not applicable.

**8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission**

Not applicable.

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<sup>7</sup> 15 U.S.C. 78s(b)(2).

**9. Exhibits**

Exhibit 1. Completed notice of proposed rule change for publication in the Federal Register.

**EXHIBIT 1**

**SECURITIES AND EXCHANGE COMMISSION**

(Release No. 34- ; File No. SR-NASD-2007-031)

Self-Regulatory Organizations: National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change to Amend NASD Rule 7001E to Increase Percentage of Market Data Revenue Shared with NASD/NYSE TRF Participants

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 , 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. 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 is proposing to amend NASD Rule 7001E (Securities Transaction Credit) to increase to 100% the percentage of New York Stock Exchange (“Tape A”), American Stock Exchange (“Tape B”) and Nasdaq Exchange (“Tape C”) revenue shared with NASD members reporting trades to the NASD/NYSE Trade Reporting Facility (the “NASD/NYSE TRF”).

Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

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

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

**7000E. CHARGES FOR NASD/NYSE TRADE REPORTING FACILITY SERVICES**

**7001E. Securities Transaction Credit**

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**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

Background

On February 1, 2007, NASD filed for immediate effectiveness a proposed rule change relating to the establishment of the NASD/NYSE TRF.<sup>3</sup> The NASD/NYSE TRF provides NASD members another mechanism for reporting locked-in transactions in exchange-listed securities effected otherwise than on an exchange.

In connection with the establishment of the NASD/NYSE TRF, NASD and NYSE Market, Inc. (“NYSE”) entered into the Limited Liability Company Agreement of NASD/NYSE Trade Reporting Facility LLC (“the NASD/NYSE TRF LLC Agreement”), a copy of which appears in the NASD Manual. Under the NASD/NYSE TRF LLC Agreement, NASD, the “SRO Member,” has sole regulatory responsibility for the NASD/NYSE TRF. NYSE, the “Business Member,” is primarily responsible for the management of the NASD/NYSE TRF’s business affairs to the extent those activities are not inconsistent with the regulatory and oversight functions of NASD. Additionally, the Business Member is obligated to pay the cost of regulation and is entitled to the profits and losses, if any, derived from the operation of the NASD/NYSE TRF.

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<sup>3</sup> See Securities Exchange Act Release No. 55325 (February 21, 2007), 72 FR 8820 (February 27, 2007) (Notice of Filing and Immediate Effectiveness of SR-NASD-2007-011). The NASD/NYSE TRF commenced operation on April 18, 2007.

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The NYSE, as the Business Member under the NASD/NYSE TRF LLC Agreement, has determined that the proposed increase in the percentage of market data revenue shared with NASD/NYSE TRF participants is necessary for competitive reasons. The NYSE believes that, as a new and late entrant to the OTC trade reporting arena, competitive pricing can differentiate its product offering. Additionally, the proposed increase would be consistent with the position of the NYSE that the economic benefits of

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<sup>4</sup> See Securities Exchange Act Release No. 55526 (March 26, 2007), 72 FR 15739 (April 2, 2007) (Notice of Filing and Immediate Effectiveness of SR-NASD-2007-025).

off-exchange trades should not accrue to exchanges.<sup>5</sup> The NYSE has indicated that because there are currently no fees for reporting trades to the NASD/NYSE TRF, the NYSE will fund regulatory costs associated with the NASD/NYSE TRF from NYSE general revenues.

NASD is proposing that the effective date of the proposed rule change shall be retroactive to April 18, 2007, the date on which the NASD/NYSE TRF commenced operation.

## 2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,<sup>6</sup> in general, and with Section 15A(b)(5) of the Act,<sup>7</sup> in particular, which requires, among other things, that NASD rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that NASD operates or controls. NASD believes that the proposed rule change is a reasonable and equitable credit structure in that it will be applied uniformly among members that participate in the NASD/NYSE TRF and that the NYSE has indicated that all regulatory costs owed by the NYSE as the Business Member related to the NASD/NYSE TRF will be funded by NYSE general revenues.

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<sup>5</sup> See Letter dated April 27, 2006 from Mr. John A. Thain, Chief Executive Officer, NYSE Group, to Chairman Cox, SEC. In that letter, the NYSE also stated that “Since dealer-internalized trades do not contribute directly to price discovery, the ideal resolution would be to remove such trades from the revenue sharing formula.”

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

<sup>7</sup> 15 U.S.C. 78o-3(b)(5).

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

NASD, as the SRO Member, is not in a position to assess directly the burden, if any, that the proposed rule change may have on competition. The NYSE, as the Business Member, has indicated that it 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.

**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 the self-regulatory organization consents, the Commission will:

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

(B) institute proceedings to determine whether the proposed rule change 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 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2007-031 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-2007-031. 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-2007-031 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

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

Nancy M. Morris

Secretary

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