

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

Initial <input checked="" type="checkbox"/>	Amendment <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) <input type="checkbox"/>	Section 19(b)(3)(A) <input checked="" type="checkbox"/>	Section 19(b)(3)(B) <input type="checkbox"/>
Pilot <input type="checkbox"/>			Rule		
Extension of Time Period for Commission Action <input type="checkbox"/>		Date Expires <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 checked="" 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 Allow NASD Members to Use the NASD/Nasdaq Trade Reporting Facility to Process Transaction Fees Charged by One Member to Another Member

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 Last Name
 Title
 E-mail
 Telephone Fax

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
 By Vice President and Associate General Counsel
 (Name) (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”),¹ the National Association of Securities Dealers, Inc. (“NASD”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to (1) amend NASD Rule 6130 (Trade Report Input) to allow NASD members to use the NASD/Nasdaq Trade Reporting Facility (the “NASD/Nasdaq TRF”) to process transaction fees charged by one member to another member on trades in NMS stocks, as defined in Rule 600(b)(47) of Regulation NMS under the Act, effected otherwise than on an exchange; and (2) repeal NASD Interpretive Material (IM)-2230 (“Third Market” Confirmations) to ensure the efficacy of the transaction fee transfer mechanism proposed herein.

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

* * * * *

2200. COMMUNICATIONS WITH CUSTOMERS AND THE PUBLIC

* * * * *

2230. Confirmations

* * * * *

[IM-2230. “Third Market” Confirmations]

[Members who act as brokers for customers in transactions in listed securities in the "third market," and members who make markets in such securities, have sought

¹ 15 U.S.C. 78s(b)(1).

clarification and uniformity regarding the disclosures to be made to customers in situations in which the third market firms had confirmed to the retailing member plus or minus a differential, e.g., “20 plus 1/8” or “20 minus 1/8 for securities trading in fractions”, or “\$20 plus \$.10 or \$20 minus \$.10 for securities trading in decimals.” In some such cases the confirmation from the retailing member to the customer has indicated that the transaction was effected for the customer at a price of 20 and that the total commission paid by the customer was received by the retailing member, and it failed to disclose that the retailing member, in effect, absorbed the 1/8 or \$.10 differential charged by the third market firm.]

[In cases such as those described above, where the retailing member effects an agency transaction for his customer with a third market firm at a price which is in line with the then current price on the exchange plus or minus a differential, with the retailer absorbing the differential charged by the third market firm, the following legend should be used by the retailing member to insure adequate disclosure on the confirmation to the customer:]

[We executed this transaction for you with a dealer who confirmed to us at the above price, plus (in the event you purchased) or less (in the event you sold) . . . cents per share. This amount was absorbed by us out of the amount shown as our commission. Full details of this transaction are available upon request.]

[* The fractional amount absorbed may be shown, for example, as 1/8 or written one-eighth.]

[Failure to send an appropriate confirmation which conforms to the provisions hereof may involve not only conduct inconsistent with high standards of commercial

honor and just and equitable principles of trade, but also violations of rules of the Commission, particularly the confirmation rule, SEC Rule 10b-10.]

* * * * *

6000. NASD SYSTEMS AND PROGRAMS

6100. CLEARING AND COMPARISON RULES

* * * * *

6130. Trade Report Input

(a) through (c) No Change.

(d) Trade Information To Be Input

Each report to the System shall contain the following information:

(1) through (13) No Change.

(14) For any transaction for which the NASD/Nasdaq Trade Reporting Facility is used to transfer a transaction fee between two NASD members, the trade report must comply with the requirements of Rule 6130(h).

(e) through (g) No Change.

(h) Inclusion of Transaction Fees in Clearing Reports Submitted to the NASD/Nasdaq Trade Reporting Facility

NASD members may agree in advance to transfer a transaction fee charged by one member to another member on a transaction in NMS stocks, as defined in Rule 600(b)(47) of Regulation NMS under the Act, effected otherwise than on an exchange through the submission of a clearing report to the NASD/Nasdaq Trade Reporting Facility. Such report, inclusive of the transaction fee, will be submitted to the National Securities Clearing Corporation for processing. To facilitate the transfer of the

transaction fee, the report submitted to the NASD/Nasdaq Trade Reporting Facility shall provide, in addition to all other information required to be submitted by any other rule, a total per share or contract price amount, inclusive of the transaction fee. Prior to submitting any such report, both members and their respective clearing firms, as applicable, must have executed an agreement, as specified by NASD, permitting the facilitation of the transfer of the transaction fee through the NASD/Nasdaq Trade Reporting Facility, as well as any other applicable agreement, such as a give up agreement pursuant to Rule 4632(h), and submitted the executed agreement(s) to the NASD/Nasdaq Trade Reporting Facility. Such agreement(s) are considered member records for purposes of NASD Rule 3110(a) and must be made and preserved by both members in conformity with applicable NASD rules. Nothing in this paragraph shall relieve a member from its obligations under NASD rules and the federal securities laws, including but not limited to, NASD Rule 2230 and SEC Rule 10b-10.

Example:

SELL 100 shares to another member at 10 plus a transaction fee of .01 per share;

REPORT 100 shares at 10 (the per share price exclusive of the transaction fee) to the NASD/Nasdaq Trade Reporting Facility for publication and also report 10.01 (the per share price inclusive of the transaction fee) for purposes of clearance and settlement through the National Securities Clearing Corporation.

(h) redesignated as (i).

* * * * *

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The Executive Committee of the Board of Governors of NASD (the “Board”) approved and authorized the filing with the Commission of the proposed rule change to amend NASD Rule 6130 by Unanimous Written Consent on June 25, 2007. The Board approved and authorized for filing with the Commission the proposed rule change to repeal NASD IM-2230 pursuant to a delegation of authority granted by the Board at its meeting on January 23, 2003, to the General Counsel of NASD Regulatory Policy and Oversight (or his officer or designee) (“Delegation of Authority”) to file, without further specific Board authorization, administrative, technical, conforming, and non-substantive changes to NASD rules. The staff will advise the Board of any action taken pursuant to the Delegation of Authority. 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 amendments to NASD rules without recourse to the membership for approval.

NASD has filed the proposed rule change for immediate effectiveness and requested a waiver of the 30-day operative delay to allow the proposed rule change to become operative on the Regulation NMS Pilot Stocks Phase Date, July 9, 2007.

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

(a) Purpose

Background

Historically, there has been no mechanism for members to charge each other

commissions or other explicit transaction fees through the NASD trade reporting and clearance submission process. Generally, members that want to charge other members an explicit transaction fee must bill and collect these fees directly from the other member outside the transaction reporting and clearing process.

Some members, however, trade on a “net” basis, meaning that the broker-dealer’s compensation is implicitly included in the execution price disseminated to the tape and reported for clearance and settlement to the National Securities Clearing Corporation (“NSCC”). For example, broker-dealer 1 (B/D 1) wants to purchase a security at \$10, with a transaction fee of \$.01 per share from broker-dealer 2 (B/D 2). Rather than selling the security at \$10 and then charging a separate transaction fee of \$.01 per share, B/D 2 will sell the security to B/D 1 “net” at a price of \$10.01. Because \$10.01 is the reported price, the transaction fee is included as part of the trade and is transferred as part of the clearance and settlement process. However, with the adoption of the Regulation NMS Order Protection Rule (Rule 611 of Regulation NMS under the Act), trades reported on a “net” basis are more apt to trade through protected quotes than those reported on a gross basis. For example, in the scenario above, if the protected inside market was \$9.95 to \$10, a trade at \$10.01 may constitute a trade-through for the purposes of the Regulation NMS Order Protection Rule (i.e., the trade is at a price worse than the best displayed offer for the security).

The Securities Industry and Financial Markets Association (SIFMA), on behalf of certain NASD member firms, approached Nasdaq and NASD concerning this issue and requested that the NASD/Nasdaq TRF facilitate the processing of transaction fees between members. They indicated that upon the implementation of the Regulation NMS

Order Protection Rule, many member firms intend to stop trading “net” and begin charging an explicit transaction fee for each trade.

Proposed Amendments to Allow Inclusion of Transaction Fees in Clearing Reports

NASD is proposing to adopt new paragraph (h) of Rule 6130,² which provides that NASD members may agree in advance to transfer a transaction fee charged by one member to another member on a transaction in NMS stocks, as defined in Rule 600(b)(47) of Regulation NMS under the Act, effected otherwise than on an exchange through the submission of a clearing report to the NASD/Nasdaq TRF. The report submitted to the NASD/Nasdaq TRF shall provide, in addition to all other information required to be submitted by any other rule, a total per share or contract price amount, inclusive of the transaction fee. As a result, members would submit two price amounts as part of their report to the NASD/Nasdaq TRF: one price including the transaction fee, which would be submitted by the NASD/Nasdaq TRF to NSCC for clearance and settlement; and one price exclusive of the transaction fee, which would be reported to the appropriate Securities Information Processor for public dissemination. For example, if B/D 1 purchases from B/D 2 at \$10.00 and B/D 1 and B/D 2 agree to a transaction fee of \$.01 per share, the trade price that would be publicly disseminated would be \$10.00, while the trade would be cleared and settled by NSCC at \$10.01.³ The parties to the trade would know both prices – the price reported for public dissemination and the

² In this rule filing, NASD is proposing to redesignate current paragraph (h) of Rule 6130 as paragraph (i).

³ Today, if this transaction were effected on a net basis, the transaction at a price of \$10.01 would both be reported to the tape and submitted to NSCC.

clearance/settlement price.

In addition, the proposed rule provides that both members and their respective clearing firms, as applicable, must execute an agreement, as specified by NASD, permitting the facilitation of the transfer of the transaction fee through the NASD/Nasdaq TRF, as well as any other applicable agreement, such as a give up agreement pursuant to Rule 4632(h). Such agreement must be executed and submitted to the NASD/Nasdaq TRF before the members can transfer any transaction fee under the proposed rule.

Among other things, the form of agreement specified by NASD would expressly provide that the acceptance and processing by the NASD/Nasdaq TRF of the transaction fee as part of a trade report shall not constitute an estoppel as to NASD or bind NASD in any subsequent administrative, civil or disciplinary proceeding with respect to the transaction fee transferred. In other words, processing of a transaction fee by the NASD/Nasdaq TRF should not be taken to mean that NASD approved that transaction fee or its amount or its appropriateness under NASD rules or federal securities laws. The mere fact that the transaction fee flowed through an NASD facility will not be a defense to any action taken by NASD relating to the fee. The proposed rule also provides that the relevant agreements are considered member records for purposes of NASD Rule 3110(a) and must be made and preserved by both members in conformity with applicable NASD rules.

Furthermore, the proposed rule expressly provides that it shall not relieve a member from its obligations under NASD rules and federal securities laws, including but not limited to, NASD Rule 2230 (Confirmations) and SEC Rule 10b-10. To the extent that any transaction fee is passed onto the customer, members should review their customer confirmation obligations to ensure that they are disclosing such fees in

compliance with all applicable rules and regulations, as well as other NASD rules, including but not limited to, NASD Rules 2320 (Best Execution) and 2440 (Fair Prices and Commissions).

The proposed rule relates solely to transaction fees charged by one NASD member to another NASD member. Members would not be able to use the NASD/Nasdaq TRF to facilitate the transfer of fees for transactions with a customer (i.e., clients that are not brokers or dealers) or a non-member. In addition, the NASD/Nasdaq TRF can only be used to facilitate the transfer of transaction fees. Members would not be able to use the NASD/Nasdaq TRF to transfer access fees or rebates on transactions.

Pursuant to SR-NASD-2007-040,⁴ NASD proposed amendments to prohibit members from submitting to an NASD Facility (i.e., a Trade Reporting Facility or the Alternative Display Facility) any report associated with a previously executed trade that was not reported to that NASD Facility. Thus, members will not be permitted to use the NASD/Nasdaq TRF to transfer transaction fees on any trades that were previously reported to another NASD Facility.

NASD also is proposing to amend Rule 6130(d) (Trade Information To Be Input) to require that for any transaction for which the NASD/Nasdaq TRF is used to transfer a transaction fee between two NASD members, the trade report must comply with the requirements of proposed Rule 6130(h).

Finally, IM-2230 (“Third Market” Confirmations) requires any member that absorbs a transaction fee transferred pursuant to proposed Rule 6130(h) to include a

⁴ See Securities Exchange Act Release No. 55962 (June 26, 2007) (notice of filing and immediate effectiveness of SR-NASD-2007-040).

legend to that effect on the customer confirmation. However, given that such a transaction fee, by definition, has been absorbed by the member and, as appropriate, incorporated into the fee paid by and disclosed to the customer on the confirmation, such disclosure provides no or minimal additional information to the customer. Accordingly, NASD is proposing to repeal IM-2230 because it could be unduly burdensome on members and potentially reduce the efficacy of the transaction fee transfer mechanism proposed herein, in light of the anticipated increase in the number of trades for which a transaction fee will be charged, while providing only minimal additional information to customers.

NASD notes that the proposed rule change does not include any proposed rules relating to fees for use of the NASD/Nasdaq TRF to transfer transaction fees pursuant to proposed new Rule 6130(h). Such fees will be the subject of a future rule filing with the Commission.

As noted in Item 2 of this filing, NASD has filed the proposed rule change for immediate effectiveness and requested a waiver of the 30-day operative delay to allow the proposed rule change to become operative on the Regulation NMS Pilot Stocks Phase Date, July 9, 2007.

(b) 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 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.

⁵ 15 U.S.C. 78o-3(b)(6).

NASD believes that by automating and improving fee transfers as a value-added service, the proposed rule change will assist members in complying with their obligations under Regulation NMS.

4. 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.⁶

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

Not applicable.

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

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Act and paragraph (f)(6) of Rule 19b-4 thereunder,⁷ in that the proposed rule change does not significantly affect the protection of investors or the public interest; does not impose any significant burden on competition; and does not become operative for 30 days after filing. NASD believes that the filing is appropriately designated as “non-controversial” because the proposed rule change would adopt a value-added service, the use of which would be voluntary, for members reporting to the NASD/Nasdaq TRF.

⁶ 15 U.S.C. 78a.

⁷ 17 CFR 240.19b-4.

In accordance with Rule 19b-4,⁸ NASD submitted written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing. NASD requests that the Commission waive the requirement that the rule change, by its terms, not become operative for 30 days after the date of the filing as set forth in Rule 19b-4(f)(6)(iii).⁹ Because the proposed rule change will assist members in complying with their obligations under Regulation NMS, such waiver is necessary to allow the proposed rule change to become operative on the Regulation NMS Pilot Stocks Phase Date, July 9, 2007.

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

Not applicable.

9. Exhibits

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

⁸ 17 CFR 240.19b-4.

⁹ 17 CFR 240.19b-4(f)(6)(iii).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-NASD-2007-046)

Self-Regulatory Organizations: National Association Of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Allow NASD Members to Use the NASD/Nasdaq Trade Reporting Facility to Process Transaction Fees Charged by One Member to Another Member

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 , 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.

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

NASD is proposing to (1) amend NASD Rule 6130 (Trade Report Input) to allow NASD members to use the NASD/Nasdaq Trade Reporting Facility (the “NASD/Nasdaq TRF”) to process transaction fees charged by one member to another member on trades in NMS stocks, as defined in Rule 600(b)(47) of Regulation NMS under the Act, effected

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4.

otherwise than on an exchange; and (2) repeal NASD Interpretive Material (IM)-2230 (“Third Market” Confirmations) to ensure the efficacy of the transaction fee transfer mechanism proposed herein.

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

* * * * *

2230. Confirmations

* * * * *

[IM-2230. “Third Market” Confirmations]

[Members who act as brokers for customers in transactions in listed securities in the "third market," and members who make markets in such securities, have sought clarification and uniformity regarding the disclosures to be made to customers in situations in which the third market firms had confirmed to the retailing member plus or minus a differential, e.g., “20 plus 1/8” or “20 minus 1/8 for securities trading in fractions”, or “\$20 plus \$.10 or \$20 minus \$.10 for securities trading in decimals.” In some such cases the confirmation from the retailing member to the customer has indicated that the transaction was effected for the customer at a price of 20 and that the total commission paid by the customer was received by the retailing member, and it failed to disclose that the retailing member, in effect, absorbed the 1/8 or \$.10 differential charged by the third market firm.]

[In cases such as those described above, where the retailing member effects an agency transaction for his customer with a third market firm at a price which is in line with the then current price on the exchange plus or minus a differential, with the retailer absorbing the differential charged by the third market firm, the following legend should be used by the retailing member to insure adequate disclosure on the confirmation to the customer:]

[We executed this transaction for you with a dealer who confirmed to us at the above price, plus (in the event you purchased) or less (in the event you sold) . . . cents per share. This amount was absorbed by us out of the amount shown as our commission. Full details of this transaction are available upon request.]

[* The fractional amount absorbed may be shown, for example, as 1/8 or written one-eighth.]

[Failure to send an appropriate confirmation which conforms to the provisions hereof may involve not only conduct inconsistent with high standards of commercial honor and just and equitable principles of trade, but also violations of rules of the Commission, particularly the confirmation rule, SEC Rule 10b-10.]

* * * * *

6000. NASD SYSTEMS AND PROGRAMS

6100. CLEARING AND COMPARISON RULES

* * * * *

6130. Trade Report Input

(a) through (c) No Change.

(d) Trade Information To Be Input

Each report to the System shall contain the following information:

(1) through (13) No Change.

(14) For any transaction for which the NASD/Nasdaq Trade Reporting Facility is used to transfer a transaction fee between two NASD members, the trade report must comply with the requirements of Rule 6130(h).

(e) through (g) No Change.

(h) Inclusion of Transaction Fees in Clearing Reports Submitted to the NASD/Nasdaq Trade Reporting Facility

NASD members may agree in advance to transfer a transaction fee charged by one member to another member on a transaction in NMS stocks, as defined in Rule 600(b)(47) of Regulation NMS under the Act, effected otherwise than on an exchange through the submission of a clearing report to the NASD/Nasdaq Trade Reporting Facility. Such report, inclusive of the transaction fee, will be submitted to the National Securities Clearing Corporation for processing. To facilitate the transfer of the transaction fee, the report submitted to the NASD/Nasdaq Trade Reporting Facility shall provide, in addition to all other information required to be submitted by any other rule, a total per share or contract price amount, inclusive of the transaction fee. Prior to submitting any such report, both members and their respective clearing firms, as applicable, must have executed an agreement, as specified by NASD, permitting the facilitation of the transfer of the transaction fee through the NASD/Nasdaq Trade Reporting Facility, as well as any other applicable agreement, such as a give up agreement pursuant to Rule 4632(h), and submitted the executed agreement(s) to the NASD/Nasdaq Trade Reporting Facility. Such agreement(s) are considered member

records for purposes of NASD Rule 3110(a) and must be made and preserved by both members in conformity with applicable NASD rules. Nothing in this paragraph shall relieve a member from its obligations under NASD rules and the federal securities laws, including but not limited to, NASD Rule 2230 and SEC Rule 10b-10.

Example:

SELL 100 shares to another member at 10 plus a transaction fee of .01 per share;

REPORT 100 shares at 10 (the per share price exclusive of the transaction fee) to the NASD/Nasdaq Trade Reporting Facility for publication and also report 10.01 (the per share price inclusive of the transaction fee) for purposes of clearance and settlement through the National Securities Clearing Corporation.

(h) redesignated as (i).

* * * * *

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

Historically, there has been no mechanism for members to charge each other commissions or other explicit transaction fees through the NASD trade reporting and clearance submission process. Generally, members that want to charge other members an explicit transaction fee must bill and collect these fees directly from the other member outside the transaction reporting and clearing process.

Some members, however, trade on a “net” basis, meaning that the broker-dealer’s compensation is implicitly included in the execution price disseminated to the tape and reported for clearance and settlement to the National Securities Clearing Corporation (“NSCC”). For example, broker-dealer 1 (B/D 1) wants to purchase a security at \$10, with a transaction fee of \$.01 per share from broker-dealer 2 (B/D 2). Rather than selling the security at \$10 and then charging a separate transaction fee of \$.01 per share, B/D 2 will sell the security to B/D 1 “net” at a price of \$10.01. Because \$10.01 is the reported price, the transaction fee is included as part of the trade and is transferred as part of the clearance and settlement process. However, with the adoption of the Regulation NMS Order Protection Rule (Rule 611 of Regulation NMS under the Act), trades reported on a “net” basis are more apt to trade through protected quotes than those reported on a gross basis. For example, in the scenario above, if the protected inside market was \$9.95 to \$10, a trade at \$10.01 may constitute a trade-through for the purposes of the Regulation NMS Order Protection Rule (i.e., the trade is at a price worse than the best displayed offer for the security).

The Securities Industry and Financial Markets Association (SIFMA), on behalf of certain NASD member firms, approached Nasdaq and NASD concerning this issue and requested that the NASD/Nasdaq TRF facilitate the processing of transaction fees between members. They indicated that upon the implementation of the Regulation NMS Order Protection Rule, many member firms intend to stop trading “net” and begin charging an explicit transaction fee for each trade.

Proposed Amendments to Allow Inclusion of Transaction Fees in Clearing Reports

NASD is proposing to adopt new paragraph (h) of Rule 6130,⁴ which provides that NASD members may agree in advance to transfer a transaction fee charged by one member to another member on a transaction in NMS stocks, as defined in Rule 600(b)(47) of Regulation NMS under the Act, effected otherwise than on an exchange through the submission of a clearing report to the NASD/Nasdaq TRF. The report submitted to the NASD/Nasdaq TRF shall provide, in addition to all other information required to be submitted by any other rule, a total per share or contract price amount, inclusive of the transaction fee. As a result, members would submit two price amounts as part of their report to the NASD/Nasdaq TRF: one price including the transaction fee, which would be submitted by the NASD/Nasdaq TRF to NSCC for clearance and settlement; and one price exclusive of the transaction fee, which would be reported to the appropriate Securities Information Processor for public dissemination. For example, if B/D 1 purchases from B/D 2 at \$10.00 and B/D 1 and B/D 2 agree to a transaction fee of \$.01 per share, the trade price that would be publicly disseminated would be \$10.00,

⁴ In this rule filing, NASD is proposing to redesignate current paragraph (h) of Rule 6130 as paragraph (i).

while the trade would be cleared and settled by NSCC at \$10.01.⁵ The parties to the trade would know both prices – the price reported for public dissemination and the clearance/settlement price.

In addition, the proposed rule provides that both members and their respective clearing firms, as applicable, must execute an agreement, as specified by NASD, permitting the facilitation of the transfer of the transaction fee through the NASD/Nasdaq TRF, as well as any other applicable agreement, such as a give up agreement pursuant to Rule 4632(h). Such agreement must be executed and submitted to the NASD/Nasdaq TRF before the members can transfer any transaction fee under the proposed rule. Among other things, the form of agreement specified by NASD would expressly provide that the acceptance and processing by the NASD/Nasdaq TRF of the transaction fee as part of a trade report shall not constitute an estoppel as to NASD or bind NASD in any subsequent administrative, civil or disciplinary proceeding with respect to the transaction fee transferred. In other words, processing of a transaction fee by the NASD/Nasdaq TRF should not be taken to mean that NASD approved that transaction fee or its amount or its appropriateness under NASD rules or federal securities laws. The mere fact that the transaction fee flowed through an NASD facility will not be a defense to any action taken by NASD relating to the fee. The proposed rule also provides that the relevant agreements are considered member records for purposes of NASD Rule 3110(a) and must be made and preserved by both members in conformity with applicable NASD rules.

Furthermore, the proposed rule expressly provides that it shall not relieve a member from its obligations under NASD rules and federal securities laws, including but

⁵ Today, if this transaction were effected on a net basis, the transaction at a price of \$10.01 would both be reported to the tape and submitted to NSCC.

not limited to, NASD Rule 2230 (Confirmations) and SEC Rule 10b-10. To the extent that any transaction fee is passed onto the customer, members should review their customer confirmation obligations to ensure that they are disclosing such fees in compliance with all applicable rules and regulations, as well as other NASD rules, including but not limited to, NASD Rules 2320 (Best Execution) and 2440 (Fair Prices and Commissions).

The proposed rule relates solely to transaction fees charged by one NASD member to another NASD member. Members would not be able to use the NASD/Nasdaq TRF to facilitate the transfer of fees for transactions with a customer (i.e., clients that are not brokers or dealers) or a non-member. In addition, the NASD/Nasdaq TRF can only be used to facilitate the transfer of transaction fees. Members would not be able to use the NASD/Nasdaq TRF to transfer access fees or rebates on transactions.

Pursuant to SR-NASD-2007-040,⁶ NASD proposed amendments to prohibit members from submitting to an NASD Facility (i.e., a Trade Reporting Facility or the Alternative Display Facility) any report associated with a previously executed trade that was not reported to that NASD Facility. Thus, members will not be permitted to use the NASD/Nasdaq TRF to transfer transaction fees on any trades that were previously reported to another NASD Facility.

NASD also is proposing to amend Rule 6130(d) (Trade Information To Be Input) to require that for any transaction for which the NASD/Nasdaq TRF is used to transfer a transaction fee between two NASD members, the trade report must comply with the requirements of proposed Rule 6130(h).

⁶ See Securities Exchange Act Release No. 55962 (June 26, 2007) (notice of filing and immediate effectiveness of SR-NASD-2007-040).

Finally, IM-2230 (“Third Market” Confirmations) requires any member that absorbs a transaction fee transferred pursuant to proposed Rule 6130(h) to include a legend to that effect on the customer confirmation. However, given that such a transaction fee, by definition, has been absorbed by the member and, as appropriate, incorporated into the fee paid by and disclosed to the customer on the confirmation, such disclosure provides no or minimal additional information to the customer. Accordingly, NASD is proposing to repeal IM-2230 because it could be unduly burdensome on members and potentially reduce the efficacy of the transaction fee transfer mechanism proposed herein, in light of the anticipated increase in the number of trades for which a transaction fee will be charged, while providing only minimal additional information to customers.

NASD notes that the proposed rule change does not include any proposed rules relating to fees for use of the NASD/Nasdaq TRF to transfer transaction fees pursuant to proposed new Rule 6130(h). Such fees will be the subject of a future rule filing with the Commission.

NASD has filed the proposed rule change for immediate effectiveness and requested a waiver of the 30-day operative delay to allow the proposed rule change to become operative on the Regulation NMS Pilot Stocks Phase Date, July 9, 2007.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁷ which requires, among other things, that NASD rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and

⁷ 15 U.S.C. 78o-3(b)(6).

equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that by automating and improving fee transfers as a value-added service, the proposed rule change will assist members in complying with their obligations under Regulation NMS.

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.⁸

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.⁹ NASD believes that the filing is appropriately designated as “non-controversial” because the proposed rule change would adopt a value-added service, the use of which would be voluntary, for members reporting to the NASD/Nasdaq TRF.

⁸ 15 U.S.C. 78a.

⁹ 17 CFR 240.19b-4(f)(6).

In accordance with Rule 19b-4,¹⁰ NASD submitted written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing. NASD has requested that the Commission waive the requirement that the rule change, by its terms, not become operative for 30 days after the date of the filing as set forth in Rule 19b-4(f)(6)(iii).¹¹ Because the proposed rule change will assist members in complying with their obligations under Regulation NMS, such waiver is necessary to allow the proposed rule change to become operative on the Regulation NMS Pilot Stocks Phase Date, July 9, 2007.

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

¹⁰ 17 CFR 240.19b-4.

¹¹ 17 CFR 240.19b-4(f)(6)(iii).

SR-NASD-2007-046 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-2007-046. 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-2007-046 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.¹²

Nancy M. Morris

Secretary

¹² 17 CFR 200.30-3(a)(12).