

# Notice to Members

JUNE 2004

## SUGGESTED ROUTING

Internal Audit  
Legal & Compliance  
Operations  
Senior Management  
Systems  
Trading

## KEY TOPICS

OATS  
Rule 6954(d)

## GUIDANCE

### OATS Execution Reporting Obligations

SEC Approves Amendments to Rule 6954 Requiring Members to Record and Report Execution Price and Firm Capacity in OATS Execution Reports; **Effective Date: October 4, 2004**

#### Executive Summary

On April 29, 2004, the Securities and Exchange Commission (SEC) approved amendments to Rule 6954(d) to require members to record and report execution price and firm capacity as part of their Order Audit Trail System (OATS) Execution Reports.<sup>1</sup> Rule 6954(d), as amended, is set forth in Attachment A. The amendments become effective on October 4, 2004.

#### Questions/Further Information

Questions regarding this *Notice to Members* may be directed to the Legal Section, Market Regulation, at 240-386-5126, or Office of General Counsel, Regulatory Policy and Oversight, at 202-728-8071. For technical questions regarding OATS Reporting, please contact the OATS Help Desk at 800-321-NASD.

#### Background and Discussion

On March 6, 1998, the SEC approved NASD Rules 6950 through 6957 (the OATS Rules).<sup>2</sup> OATS provides comprehensive information regarding orders and transactions that strengthens NASD's ability to conduct surveillance and investigations of member firms for potential violations of NASD rules and the federal securities laws.

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When the OATS Rules initially were adopted, it was determined that NASD would obtain execution price and firm capacity information (*i.e.*, the capacity in which the member acted for purposes of the transaction, for example, on an agency, principal or riskless principal basis) from trading information rather than via OATS reports. At that time, the vast majority of trading in NASDAQ securities was reported through NASDAQ's Automated Confirmation Transaction Service (ACT).<sup>3</sup> Members are required to input order identifier information into ACT trade reports, and NASD systematically matches the ACT trade reports with corresponding OATS reports to obtain certain trade-related information including, among other things, execution price and firm capacity. Similarly, members using the NASD Alternative Display Facility (ADF) Trade Reporting and Comparison Service (TRACS) are required to record OATS order identifier information in TRACS trade reports, which is then matched with OATS information to obtain execution price and firm capacity.

Recently, however, this "ACT/TRACS matching" process has become less effective, in part because a percentage of trades in NASDAQ securities are no longer reported to ACT or TRACS. Further, if there are any errors in the linking information provided to ACT, TRACS or OATS, the ACT/TRACS matching process is hindered.

Accordingly, the new amendments require that members record and report two additional fields, execution price and firm capacity, as part of their OATS Execution Reports. These fields will be required on all OATS Execution Reports, regardless of where the trade was reported or whether any Reporting Exception Code is included with the Execution Report. To allow members adequate time to program their systems to submit the two additional fields and to coincide with the OATS third quarter 2004 release, these amendments will become effective on October 4, 2004. Any OATS Execution Reports submitted after October 4, 2004 without the execution price and capacity fields populated will be rejected by OATS. More detailed information on these new requirements, including the technical requirements for submission of these two additional data elements, will be provided in the OATS Reporting Technical Specifications, which are available on the NASD Web Site at <http://www.nasdr.com/3310.asp>.

## Endnotes

- 1 See Securities Exchange Act Release No. 49628 (April 29, 2004), 69 FR 89 (May 7, 2004) (File No. SR-NASD-2004-023) (SEC Approval Order). See also File No. SR-NASD-2004-093, extending the implementation date of SR-NASD-2004-023 to October 4, 2004.
- 2 See *Notice to Members 98-33* for a complete description of the OATS Rules.
- 3 ACT is an automated system owned and operated by NASDAQ that captures transaction information on a real-time basis.

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## ATTACHMENT A

New language is underlined; deletions are in brackets.

### 6954. Recording of Order Information

(a) through (c) No Change.

#### **(d) Order Modifications, Cancellations, and Executions**

Order information required to be recorded under this Rule when an order is modified, canceled, or executed includes the following.

(1) and (2) No Change.

(3) When a Reporting Member executes an order, in whole or in part, the

Reporting Member shall record:

(A) through (G) No Change.

(H) the date and time of execution, [ and]

(I) the execution price,

(J) the capacity in which the member executed the transaction (e.g., agency, principal or riskless principal), and

(K) the national securities exchange or facility operated by a registered securities association where the trade was reported.