

NASD Notice to Members 98-73

Firms Required To Register For Order Audit Trail System; Amendments To OATS Rules

Suggested Routing

- ☒ Senior Management
- ☐ Advertising
- ☐ Continuing Education
- ☐ Corporate Finance
- ☒ Executive Representatives
- ☐ Government Securities
- ☐ Institutional
- ☐ Insurance
- ☐ Internal Audit
- ☒ Legal & Compliance
- ☐ Municipal
- ☐ Mutual Fund
- ☐ Operations
- ☐ Options
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- ☐ Registration
- ☐ Research
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- ☒ Systems
- ☒ Trading
- ☐ Training
- ☐ Variable Contracts

Executive Summary

In March 1998, the Securities and Exchange Commission (SEC) approved new National Association of Securities Dealers, Inc. (NASD[®]) Rules 6950 through 6957—the Order Audit Trail System (OATSSM) Rules. The effective dates for the OATS Rules vary according to the following schedule:

- Phase 1: By March 1, 1999, electronic orders received by Market Makers and Electronic Communication Networks (ECNs) must be reported.
- Phase 2: By August 1, 1999, all electronic orders must be reported.
- Phase 3: By July 31, 2000, all non-electronic, or manual, orders must be reported.

(See *Notice to Members 98-33* for a complete description of the OATS Rules.)

In accordance with the OATS Rules, the NASD is now requiring all NASD member firms that make markets in Nasdaq[®] securities and ECNs to register for OATS using the newly developed Subscriber Initiation and Registration Form (see the following Form). Market Makers and ECNs that are required to record and report order information to OATS under the OATS Rules must complete and return this Form to the NASD by **September 14, 1998**, regardless of whether they are scheduled to report in Phase 1 or by Phase 3 (July 31, 2000).¹ Members that fail to complete and return the Form will be unable to report OATS data to the NASD; failure to report order information is a violation of NASD Rules 6955 and 2110.

In addition, all third parties that intend to submit data on a member's behalf during Phase 1 also must submit a copy of the Form by **September 14, 1998**.

The Form should be mailed to:
NASD Regulation, Inc.
Business Program Support
15201 Diamondback Drive
Rockville, MD 20850

Or faxed to: (888) 345-6275 or (301) 590-6504.

Questions regarding OATS or the Form may be directed to the NASD via phone at (888) 700-OATS or (301) 590-6503, or via e-mail at oatssc@nasd.com. Information about OATS is available on the NASD RegulationSM Web Site (www.nasdr.com).

Also, on July 31, 1998, the SEC approved amendments to OATS Rules 6954 and 6957 and NASD Rule 3110 (the Books and Records Rule).² The amendments clarify the recording and recordkeeping requirements associated with the OATS Rules.

Discussion Registration For OATS Reporting

Information requested on the Form is necessary to register members and non-member third parties to report order information to OATS. The Form requires member firms and non-member third parties to identify contacts for administrative, technical, and compliance issues; organizations that will be reporting OATS information on their behalf; organizations on whose behalf they are reporting; and the transport method that they will use for reporting, such as file transfer protocol (FTP) or e-mail.

The NASD will use the information furnished on the Form to schedule the installation of network circuits for firms reporting via FTP and provide Subscriber Packets. These Subscriber Packets will supply instructions about requesting a circuit from the network provider; deadlines for

circuit installation; user IDs and passwords for accessing OATS; assigned reporting dates within the phase; and a *Subscriber Manual* describing procedures for transmitting data to OATS, performing self-administration, and using OATS applications on the Web.

All firms that handle or execute orders for Nasdaq securities will be required to complete a Form before they can begin reporting to OATS. In January 1999, a version of the Form and the *Subscriber Manual* will be available for firms and third parties that will begin reporting in Phase 2 (August 1, 1999) or Phase 3. Firms will be able to download the Form and the Manual from the OATS Web Pages or request them from the NASD.

Amendments To OATS Rules

OATS Rule 6954(c) sets forth the order information that must be recorded when an order is transmitted, either from one department to another within a member firm or to another member. This Rule has been amended by adding a new paragraph that will now require members to record certain information when an order is transmitted to a non-member, such as to a foreign

broker/dealer or to a foreign exchange. NASD members will be required to report this information to OATS pursuant to OATS Rule 6955.

OATS Rule 6954(a)(4) and the Books and Records Rule, which require members to record and maintain specified information related to OATS, have been revised to set forth specific recordkeeping requirements. In particular, both rules have been amended to specifically reference the period of time for retaining records specified in SEC Rule 17a-4(b) and the conditions set forth in SEC Rule 17a-4(f) for reproducing records on micrographic media or by means of electronic storage media.

The Books and Records Rule also has been amended to require members to record and maintain information relevant to the OATS data recording and reporting requirements only with respect to an "order" in Nasdaq equity securities, as defined by OATS Rule 6951(j). Finally, OATS Rule 6957(d) has been revised to indicate the effective dates for compliance with the amendments to the Books and Records Rule. The OATS Rules, revised to reflect these amendments, can be found on the NASD Regulation Web Site (www.nasdr.com).

The effective dates for compliance with the amended rules are:

- Rule 3110(h)(1)(A) and (B):
March 1, 1999

- Rule 3110(h)(1)(C):
July 31, 2000

- Rule 3110(h)(2) and (3):
March 1, 1999

- Rule 6954(a)(4):
March 1, 1999

- Rule 6954(c)(6):
August 1, 1999, for electronic orders;
July 31, 2000, for manual orders.

Endnotes

¹ Members previously received notice of this requirement through a posting on the NASD Regulation Web Site on September 2, 1998. Firms that make markets in Nasdaq securities and ECNs received this Form via mail in early September.

² Securities Exchange Act Release No. 40286 (July 31, 1998), 63 FR 42088 (August 6, 1998).

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