

Notice to Members

DECEMBER 2006

SUGGESTED ROUTING

Internal Audit
Legal & Compliance
Operations
Registered Representatives
Senior Management
Systems
Trading

KEY TOPICS

NASD Rules 6950 through 6958
Order Audit Trail System (OATS)

GUIDANCE

Order Audit Trail System (OATS)

SEC Approves Amendments Expanding the OATS Requirements to OTC Equity Securities and NASD Publishes Revised *OATS Reporting Technical Specifications*; Effective Date: June 11, 2007

Executive Summary

On October 10, 2006, the Securities and Exchange Commission (SEC) approved amendments to NASD Rules 6951, 6952, and 6955 to expand the OATS reporting requirements to over-the-counter (OTC) equity securities.¹ NASD is publishing this *Notice* to explain those amendments and inform members that a new version of the *OATS Reporting Technical Specifications (Technical Specifications)* also is being published to reflect these amendments and other technical changes described herein. The *Technical Specifications* can be found on NASD's Web site at Regulatory Systems > OATS > Technical Specifications. The effective date of the amendments and the changes to the *Technical Specifications* is June 11, 2007.

Questions/Further Information

Questions concerning this *Notice* may be directed to the Legal Section, Market Regulation, at (240) 386-5126 or to the Office of General Counsel at (202) 728-8071.

Discussion

Amendments to the OATS Rules

Expansion of the OATS Reporting Requirements to OTC Equity Securities

NASD Rules 6950 through 6958 (the OATS Rules) require member firms to record in electronic form and report to NASD on a daily basis certain information regarding orders originated, received, transmitted, modified, canceled or executed by NASD members relating to equity securities listed and traded on the NASDAQ Stock Market. OATS captures this order information and integrates it with quote and transaction information to create a time-sequenced record of orders, quotes and transactions. This information is critical to NASD staff in conducting surveillance and investigations of member firms for violations of NASD rules and federal securities laws.

Currently, the OATS reporting requirements do not apply to OTC equity securities. To enhance the effectiveness of NASD's surveillance programs, the SEC approved amendments to the OATS Rules to expand the types of securities that members must report to OATS. Under these amendments, members will be required to record and report order information relating to "OTC equity securities," which are defined as equity securities that (1) are not listed on a national securities exchange; or (2) are listed on one or more regional stock exchanges and do not qualify for dissemination of transaction reports via the facilities of the Consolidated Tape. This definition would include, *inter alia*, equity securities quoted on the OTC Bulletin Board Service or on the Pink Sheets Electronic Quotation Service. For purposes of the OATS Rules, the definition of "OTC equity securities" specifically excludes direct participation programs, as defined in Rule 6910.²

As a result of these amendments, beginning on June 11, 2007, members will be required to record and report to OATS all order information regarding equity securities listed on the NASDAQ Stock Market and OTC equity securities.

Revision to OATS Rules Regarding Orders with Unavailable Information

From time to time, a member may receive or execute orders in a security that does not have a symbol assigned to it at the time an OATS order event occurs. To address this situation, and any other situation involving information that is unavailable at the time of an OATS order event, the SEC approved amendments to NASD Rule 6955 to clarify that a member is not required to transmit an OATS report to NASD until NASD has assigned a symbol to that security.³ After a symbol has been assigned, the member must report all applicable order information to OATS.⁴ Although the OATS reporting requirement is delayed pending the assignment of a symbol, the member must comply with the recording requirements under Rule 6954, which requires that the member record an order event immediately following its occurrence.⁵ Order events that are submitted to OATS on an OATS processing date later than the order event date because of a delay in the assignment of a symbol will not be marked late by OATS.

Changes to the Technical Specifications

NASD is also announcing the publication of a new version of the *Technical Specifications*. The primary revision to the *Technical Specifications* is the expansion of the list of securities that will be reportable to OATS as of June 11, 2007; namely, OTC equity securities. A list of OTC equity securities that are subject to the OATS reporting requirements will be available through the OATS Web page on NASD's Web site at www.nasd.com.

In addition to the expanded list of reportable securities, the following changes will also be effective as of June 11, 2007:

- ▶ Addition of new Destination Codes to indicate that an order was routed to a specific U.S. exchange, a non-U.S. exchange or to a non-member affiliate of an NASD member.
- ▶ Addition of a new Member Type Code to indicate that an order was received from a non-member affiliate of an NASD member.
- ▶ Addition of new Special Handling Codes.
- ▶ Addition of a new Reporting Exception Code to identify transactions reported to NASD on Form T.⁶
- ▶ Addition of new Desk Type Codes.

Endnotes

- 1 Exchange Act Rel. No. 54585 (Oct. 10, 2006), 71 FR 61112 (Oct. 17, 2006) (SR-NASD-2005-101).
- 2 Consistent with the trade reporting rules for OTC Equity Securities under the Rule 6600 Series, "restricted securities," as defined in Rule 144(a)(3) under the Securities Act of 1933, and any securities designated in the PORTAL Market (the Rule 6700 Series) are not subject to the OATS Rules.
- 3 The amendments to Rule 6955 provide that members are not required to transmit the OATS report to NASD until all of the information identified in Rule 6954(b), (c) and (d) is available. Although the provision is not limited to orders involving securities without symbols, NASD anticipates that most, if not all, delayed OATS reports will involve such orders. The security symbol is a unique data element in that the timing of its issuance is not wholly within the control of the member. NASD anticipates that, in general, most OATS information should be available on the date on which the OATS reporting event occurs.
- 4 NASD emphasizes that members should make requests for symbols promptly to minimize any delay in trade reporting, as well as delays between the OATS order event and the transmission of the OATS report to NASD. In general, members are required to report trades within 90 seconds of execution or on a next-day basis, as applicable, under Rule 6620(a).
- 5 Most situations relating to orders placed in securities without assigned symbols involve foreign securities. In connection with such orders, members should convert any foreign currency amounts to U.S. dollars for purposes of OATS reporting. Members are permitted to use reasonable business practices for the conversion; however, members should document their practice regarding currency conversion and should be consistent in their methodology.
- 6 NASD Rule 6620(a)(4) provides that in instances where electronic submission to the OTC Reporting Facility is not possible, last sale reports of transactions in OTC Equity Securities shall be reported as soon as practicable to the Market Regulation Department on Form T.

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