

OMB APPROVAL

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SECURITIES AND EXCHANGE COMMISSION
 WASHINGTON, D.C. 20549
 Form 19b-4

File No. SR - 2005 - 101
 Amendment No.

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

Initial ☒	Amendment ☐	Withdrawal ☐	Section 19(b)(2) ☒	Section 19(b)(3)(A) ☐	Section 19(b)(3)(B) ☐
Pilot ☐			Rule ☐ 19b-4(f)(1) ☐ 19b-4(f)(4) ☐ 19b-4(f)(2) ☐ 19b-4(f)(5) ☐ 19b-4(f)(3) ☐ 19b-4(f)(6)		
Extension of Time Period for Commission Action ☐			Date Expires 		

Exhibit 2 Sent As Paper Document
☐

Exhibit 3 Sent As Paper Document
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Description

Provide a brief description of the proposed rule change (limit 250 characters).

Rule change to amend NASD Rules 6951 and 6952 to require members to record and report to the Order Audit Trail System order information relating to OTC equity securities.

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
 (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.

STEPHANIE DUMONT,

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EDFS 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

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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"), the National Association of Securities Dealers, Inc. ("NASD") is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to amend NASD Rules 6951 and 6952 to require members to record and report to the Order Audit Trail System ("OATS") order information relating to OTC equity securities. Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

6950. Order Audit Trail System

6951. Definitions

For purposes of Rules 6950 through 6957:

(a) through (i) No change.

(j) "Order" shall mean any oral, written, or electronic instruction to effect a transaction in a Nasdaq Stock Market equity security or OTC equity security that is received by a member from another person for handling or execution, or that is originated by a department of a member for execution by the same or another member, other than any such instruction to effect a proprietary transaction originated by a trading desk in the ordinary course of a member's market making activities.

(k) "Order Audit Trail System" shall mean the automated system owned and operated by the Association that is designed to capture order information reported by members for integration with trade [information reported to the Nasdaq Market Center]

and quotation information [disseminated by members in order] to provide the Association with an accurate time sequenced record of orders and transactions.

(l) "OTC equity security" shall mean:

(1) any equity security that is not listed on The Nasdaq Stock Market or a national securities exchange;

(2) any equity security that is listed on one or more regional stock exchanges and does not qualify for dissemination of transaction reports via the facilities of the Consolidated Tape; or

(3) any Direct Participation Program as defined in Rule 6910 that is not listed on The Nasdaq Stock Market or a national securities exchange.

~~[(l)]~~ (m) "Program Trade" shall mean a trading strategy involving the related purchase or sale of a group of 15 or more securities having a total market value of \$1 million or more, as further defined in New York Stock Exchange Rule 80A.

~~[(m)]~~ (n) "Reporting Agent" shall mean a third party that enters into any agreement with a member pursuant to which the Reporting Agent agrees to fulfill such member's obligations under Rule 6955.

~~[(n)]~~ (o) "Reporting Member" shall mean a member that receives or originates an order and has an obligation to record and report information under Rules 6954 and 6955.

6952. Applicability

(a) through (b) No change.

(c) Unless otherwise indicated, the requirements of Rules 6953 through 6957 shall apply to all executed or unexecuted orders [for equity securities traded in The Nasdaq Stock Market].

* * * * *

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by the Board of Directors of NASD Regulation, Inc. at its meeting on April 21, 2004, which authorized the filing of the rule change with the SEC. Counsel for The Nasdaq Stock Market and NASD Dispute Resolution have been provided an opportunity to consult with respect to the proposed rule change, pursuant to the Plan of Allocation and Delegation of Functions by NASD to its Subsidiaries. The Board of Governors of NASD had an opportunity to review the proposed rule change at its meeting on April 22, 2004. 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.

In recognition of the technological and systems changes the proposed rule change will require, NASD is proposing an effective date of 120 days following publication of revised OATS Technical Specifications, which will be published no later than 60 days following Commission approval. The effective date will be announced in a Notice to Members.

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

(a) Purpose

NASD Rules 6950 through 6957 (the "OATS Rules") impose obligations on member firms to record in electronic form and report to NASD on a daily basis certain information with respect to orders originated, received, transmitted, modified, canceled or executed by NASD members relating to equity securities listed and traded on The Nasdaq Stock Market, Inc. ("Nasdaq"). 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.

To enhance the effectiveness of OATS as a regulatory tool, NASD is proposing to amend the OATS Rules to require members to record and report order information relating to "OTC equity securities." For purposes of the proposed rule change, "OTC equity security" is defined as (1) any equity security that is not listed on Nasdaq or a national securities exchange; (2) any equity security that is listed on one or more regional stock exchanges and does not qualify for dissemination of transaction reports via the facilities of the Consolidated Tape; or (3) any Direct Participation Program as defined in Rule 6910 that is not listed on Nasdaq or a national securities exchange. This definition would include, *inter alia*, equity securities quoted on the OTC Bulletin Board Service and the Pink Sheets Electronic Quotation Service.

Currently, the OATS requirements do not apply to OTC equity securities and as a

result, NASD staff is unable to recreate, on an automated basis, an order and transaction audit trail for these securities. Expansion of OATS requirements to these securities would enhance NASD staff's ability to review and examine for member compliance with certain trading rules, including, but not limited to, Rule 2320 (Best Execution and Interpositioning), Rule 6541 (Limit Order Protection) and Rule 3320 (Offers at Stated Prices). NASD recognizes that the trading in OTC equity securities is often more manual than Nasdaq securities and this may result in additional burdens on member firms to capture this data electronically. NASD, however, believes capturing and reporting this information electronically to NASD is critical to NASD's surveillance program.

As noted in Item 2 of this filing, in recognition of the technological and systems changes the proposed rule change will require, NASD is proposing an effective date of 120 days following publication of revised OATS Technical Specifications, which will be published no later than 60 days following Commission approval. The effective date will be announced in a Notice to Members.

(b) Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that NASD rules must 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. The proposed rule change is consistent with the Act because it will enhance NASD's ability to conduct surveillance and investigations of member firms for violations of NASD's rules and federal securities laws.

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, as amended.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The proposed rule change was published for comment in NASD Notice to Members 04-80 (November 2004). In the Notice, NASD solicited comment from members regarding several proposals, only one of which is encompassed by the proposed rule change.¹ A copy of the Notice to Members is attached as Exhibit 2. Eight comment letters were received in response to the Notice.² Copies of the comment letters received in response to the Notice are also attached at Exhibit 2.

Two commenters expressed support for the proposal to expand OATS requirements to OTC equity securities. One commenter noted that it would not be

¹ Three other proposals were discussed in the Notice, but are not part of this proposed rule change. The first would require members to record and report to OATS order information relating to exchange-listed securities. The second would require enhanced information, including execution data, relating to orders routed to non-members or exchanges. The third would require members to record and report to OATS proprietary orders generated in the ordinary course of market making activities. NASD is still analyzing these proposals and therefore is not proposing amendments related to these proposals at this time. Accordingly, NASD is not addressing herein the comments received in response to these three proposals.

² Letter from Emily Vitale dated November 24, 2004; Letter from ML Stern & Co., LLC dated January 14, 2005; Letter from Ameritrade, Inc. dated January 18, 2005; Letter from Instinet Group dated January 20, 2005; Letter from Operations Committee of the Securities Industry Association dated January 20, 2005; Letter from royalblue Financial Corp. dated January 20, 2005; Letter from Jed Bandes

difficult to extend OATS reporting to such securities. Another commenter noted that such a change would be relatively straightforward, but indicated that service bureaus will need adequate time to make the required system changes. One commenter stated that expanding OATS requirements to OTC equity securities would be problematic because the nature of that business is manual, not electronic. The commenter indicated that the proposal would require manual recording of data at all locations through which the order may pass, which would result in delays in executions and a high rate of errors if order information is communicated orally.

One commenter noted the significant burdens of the proposal and suggested that NASD allow at least six months for implementation of the proposed rule change. Another commenter noted the other significant industry initiatives that require management and development resources and requested a reasonable time to implement the proposed changes. Two commenters opposed the OATS rules generally, without specifically commenting on any of the proposals. These commenters cited the additional costs and burdens to member firms of complying with the OATS requirements.

Although NASD understands that the proposed rule change may impose additional costs and burdens on members, in part due to the more manual nature of trading in OTC equity securities, this additional OATS data is critical to NASD's surveillance and regulatory program. To address the concerns raised by commenters, as described above, NASD has proposed an extended implementation period, which NASD believes will provide members adequate time to make the necessary technological and

systems changes.

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.

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.

9. Exhibits

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

Exhibit 2a. NASD Notice to Members 04-80 (November 2004).

Exhibit 2b. Index to comments received in response to NASD Notice to Members 04-80 (November 2004).

Exhibit 2c. Comments received in response to NASD Notice to Members 04-80 (November 2004).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-NASD-2005-101)

SELF-REGULATORY ORGANIZATIONS

Proposed Rule Change by National Association of Securities Dealers, Inc.
Relating to Expansion of OATS Reporting Requirements to OTC Equity Securities

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. 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 Rules 6951 and 6952 to require members to record and report to the Order Audit Trail System ("OATS") order information relating to OTC equity securities. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

6950. Order Audit Trail System

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

6951. Definitions

For purposes of Rules 6950 through 6957:

(a) through (i) No change.

(j) "Order" shall mean any oral, written, or electronic instruction to effect a transaction in a Nasdaq Stock Market equity security or OTC equity security that is received by a member from another person for handling or execution, or that is originated by a department of a member for execution by the same or another member, other than any such instruction to effect a proprietary transaction originated by a trading desk in the ordinary course of a member's market making activities.

(k) "Order Audit Trail System" shall mean the automated system owned and operated by the Association that is designed to capture order information reported by members for integration with trade [information reported to the Nasdaq Market Center] and quotation information [disseminated by members in order] to provide the Association with an accurate time sequenced record of orders and transactions.

(l) "OTC equity security" shall mean:

(1) any equity security that is not listed on The Nasdaq Stock Market or a national securities exchange;

(2) any equity security that is listed on one or more regional stock exchanges and does not qualify for dissemination of transaction reports via the facilities of the Consolidated Tape; or

(3) any Direct Participation Program as defined in Rule 6910 that is not listed on The Nasdaq Stock Market or a national securities exchange.

[(l)] (m) "Program Trade" shall mean a trading strategy involving the related purchase or sale of a group of 15 or more securities having a total market value of \$1 million or more, as further defined in New York Stock Exchange Rule 80A.

[(m)] (n) "Reporting Agent" shall mean a third party that enters into any agreement with a member pursuant to which the Reporting Agent agrees to fulfill such member's obligations under Rule 6955.

[(n)] (o) "Reporting Member" shall mean a member that receives or originates an order and has an obligation to record and report information under Rules 6954 and 6955.

6952. Applicability

(a) through (b) No change.

(c) Unless otherwise indicated, the requirements of Rules 6953 through 6957 shall apply to all executed or unexecuted orders [for equity securities traded in The Nasdaq Stock Market].

* * * * *

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

NASD Rules 6950 through 6957 (the "OATS Rules") impose obligations on member firms to record in electronic form and report to NASD on a daily basis certain information with respect to orders originated, received, transmitted, modified, canceled or executed by NASD members relating to equity securities listed and traded on The Nasdaq Stock Market, Inc. ("Nasdaq"). 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 in conducting surveillance and investigations of member firms for violations of NASD rules and federal securities laws.

To enhance the effectiveness of OATS as a regulatory tool, NASD is proposing to amend the OATS Rules to require members to record and report order information relating to "OTC equity securities." For purposes of the proposed rule change, "OTC equity security" is defined as (1) any equity security that is not listed on Nasdaq or a national securities exchange; (2) any equity security that is listed on one or more regional stock exchanges and does not qualify for dissemination of transaction reports via the facilities of the Consolidated Tape; or (3) any Direct Participation Program as defined in Rule 6910 that is not listed on Nasdaq or a national securities exchange. This definition would include, *inter alia*, equity securities quoted on the OTC Bulletin Board Service and the Pink Sheets Electronic Quotation Service.

Currently, the OATS requirements do not apply to OTC equity securities and as a result, NASD is unable to recreate, on an automated basis, an order and transaction audit trail for these securities. Expansion of OATS requirements to these securities would

enhance NASD's ability to review and examine for member compliance with certain trading rules, including, but not limited to, Rule 2320 (Best Execution and Interpositioning), Rule 6541 (Limit Order Protection) and Rule 3320 (Offers at Stated Prices). NASD recognizes that the trading in OTC equity securities is often more manual than Nasdaq securities and this may result in additional burdens on member firms to capture this data electronically. NASD, however, believes capturing and reporting this information electronically to NASD is critical to NASD's surveillance program.

In recognition of the technological and systems changes the proposed rule change will require, NASD is proposing an effective date of 120 days following publication of revised OATS Technical Specifications, which will be published no later than 60 days following Commission approval. The effective date will be announced in a Notice to Members.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that NASD rules must 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. The proposed rule change is consistent with the Act because it will enhance NASD's ability to conduct surveillance and investigations of member firms for violations of NASD's rules and federal securities laws.

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,

as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The proposed rule change was published for comment in NASD Notice to Members 04-80 (November 2004). In the Notice, NASD solicited comment from members regarding several proposals, only one of which is encompassed by the proposed rule change.³ Eight comment letters were received in response to the Notice.⁴

Two commenters expressed support for the proposal to expand OATS requirements to OTC equity securities. One commenter noted that it would not be difficult to extend OATS reporting to such securities. Another commenter noted that such a change would be relatively straightforward, but indicated that service bureaus will need adequate time to make the required system changes. One commenter stated that expanding OATS requirements to OTC equity securities would be problematic because the nature of that business is manual, not electronic. The commenter indicated that the

³ Three other proposals were discussed in the Notice, but are not part of this proposed rule change. The first would require members to record and report to OATS order information relating to exchange-listed securities. The second would require enhanced information, including execution data, relating to orders routed to non-members or exchanges. The third would require members to record and report to OATS proprietary orders generated in the ordinary course of market making activities. NASD is still analyzing these proposals and therefore is not proposing amendments related to these proposals at this time. Accordingly, NASD is not addressing herein the comments received in response to these three proposals.

⁴ Letter from Emily Vitale dated November 24, 2004; Letter from ML Stern & Co., LLC dated January 14, 2005; Letter from Ameritrade, Inc. dated January 18, 2005; Letter from Instinet Group dated January 20, 2005; Letter from Operations Committee of the Securities Industry Association dated January 20, 2005; Letter from royalblue Financial Corp. dated January 20, 2005; Letter from Jed Bandes dated January 20, 2005; and Letter from The Financial Information Forum dated January 21, 2005.

proposal would require manual recording of data at all locations through which the order may pass, which would result in delays in executions and a high rate of errors if order information is communicated orally.

One commenter noted the significant burdens of the proposal and suggested that NASD allow at least six months for implementation of the proposed rule change. Another commenter noted the other significant industry initiatives that require management and development resources and requested a reasonable time to implement the proposed changes. Two commenters opposed the OATS rules generally, without specifically commenting on any of the proposals. These commenters cited the additional costs and burdens to member firms of complying with the OATS requirements.

Although NASD understands that the proposed rule change may impose additional costs and burdens on members, in part due to the more manual nature of trading in OTC equity securities, this additional OATS data is critical to NASD's surveillance and regulatory program. To address the concerns raised by commenters, as described above, NASD has proposed an extended implementation period, which NASD believes will provide members adequate time to make the necessary technological and systems changes.

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. Please include File Number SR-NASD-2005-101 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-9303.

All submissions should refer to File Number SR-NASD-2005-101. 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, 100 F Street, NE, Washington, DC 20549. 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 the File Number SR-NASD-2005-101 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.⁵

Secretary

⁵ 17 CFR 200.30-3(a)(12).