

OMB APPROVAL

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Page 1 of 36

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

File No. SR - 00 - 23

Amendment No. 3

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) ☐
			Rule		
Pilot ☐	Extension of Time Period for Commission Action ☐	Date Expires 	☐ 19b-4(f)(1)	☐ 19b-4(f)(4)	
			☐ 19b-4(f)(2)	☐ 19b-4(f)(5)	
			☐ 19b-4(f)(3)	☐ 19b-4(f)(6)	

Exhibit 2 Sent As Paper Document



Exhibit 3 Sent As Paper Document

**Description**

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

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.

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”) Amendment No. 3 to SR-NASD-00-23, which proposes to make certain changes to NASD’s Order Audit Trail System (OATS) rules. The purpose of this Amendment No. 3 is to address the comment letters received by the Commission in response to the publication of the proposed rule change in the Federal Register and to propose amendments responsive to the comments where appropriate.¹ NASD also proposes to make certain technical amendments to the text of the proposed rule change.

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

* * * * *

6951. Definitions

For purposes of Rules 6950 through 6957:

(a) through (m) No Change.

(n) “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.

A member shall not be considered a Reporting Member in connection with an order, if the following conditions are met:

(1) the member engages in a non-discretionary order routing process,

¹ See Exchange Act Release No. 51890 (June 21, 2005), 70 FR 36986 (June 27, 2005).

pursuant to which it immediately routes, by electronic or other means, all of its orders to a single receiving Reporting Member;

(2) the member does not direct and does not maintain control over subsequent routing or execution by the receiving Reporting Member;

(3) the receiving Reporting Member records and reports all information required under Rules 6954 and 6955 with respect to the order; and

(4) the member has a written agreement with the receiving Reporting Member specifying the respective functions and responsibilities of each party to effect full compliance with the requirements of Rules 6954 and 6955.

* * * * *

6954. Recording of Order Information

(a) No Change.

(b) Order Origination and Receipt

Unless otherwise indicated, the following order information must be recorded under this Rule when an order is received or originated. For purposes of this Rule, the order origination or receipt time is the time the order is received from the customer.

(1) through (18) No Change.

(c) Order Transmittal

Order information required to be recorded under this Rule when an order is transmitted includes the following.

(1) When a Reporting Member transmits an order to a[nother] department within the member, [other than to the trading department,] the Reporting Member shall record:

(A) through (C) No Change.

(D) an identification of the department and nature of the department to which the order was transmitted, [and]

(E) the date and time the order was received by that department,

(F) the number of shares to which the transmission applies, and

(G) any special handling requests.[:]

(2) through (6) No Change.

(d) No Change.

* * * * *

6955. Order Data Transmission Requirements

(a) through (c) No Change.

(d) Exemptions

(1) Pursuant to the Rule 9600 Series, the staff, for good cause shown after taking into consideration all relevant factors, may exempt, subject to specified terms and conditions, a member from the order data transmission requirements of this Rule for manual orders, if such exemption is consistent with the protection of investors and the public interest, and the member meets the following criteria:

(A) the member and current control affiliates and associated persons of the member have not been subject within the last five years to any final disciplinary action, and within the last ten years to any disciplinary action involving fraud;

(B) the member has annual revenues of less than \$2 million;

(C) the member does not conduct any market making activities in Nasdaq Stock Market equity securities;

(D) the member does not execute principal transactions with its customers (with limited exception for principal transactions executed pursuant to error corrections); and

(E) the member does not conduct clearing or carrying activities for other firms.

(2) An exemption provided pursuant to this paragraph (d) shall not exceed a period of two years. At or prior to the expiration of a grant of exemptive relief under this paragraph (d), a member meeting the criteria set forth in paragraph (d)(1) may request, pursuant to the Rule 9600 Series, a subsequent exemption, which will be considered at the time of the request, consistent with the protection of investors and the public interest.

(3) This paragraph shall be in effect until [five years from the effective date of the proposed rule change].

* * * * *

6957. Effective Date

The requirements of the Order Audit Trail System shall be effective in accordance with the following schedule:

(a) and (b) No Change.

(c) Manual Orders

The requirements of the Order Audit Trail System shall be effective six months

after publication of the revised *OATS Reporting Technical Specifications* relating to[120 days after SEC approval of] SR-NASD-00-23, for all manual orders, provided that firms shall be required to report information item (18) specified in Rule 6954(b) only to the extent such item is available to them[and shall not be required to record and report information items (4) and (5) specified in Rule 6954(b) and information item (1) specified in Rule 6954(c)].

(d) No Change.

* * * * *

9600. PROCEDURES FOR EXEMPTIONS

9610. Application

(a) Where to File

A member seeking an exemption from Rule 1021, 1022, 1070, 2210, 2320, 2340, 2520, 2710, 2720, 2810, 2850, 2851, 2860, Interpretive Material 2860-1, 3010(b)(2), 3020, 3210, 3230, 3350, 6955, 8211, 8212, 8213, 11870, or 11900, Interpretive Material 2110-1, or Municipal Securities Rulemaking Board Rule G-37 shall file a written application with the appropriate department or staff of NASD and provide a copy of the application to the Office of General Counsel of NASD.

(b) and (c) No Change.

* * * * *

(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 meetings on March 29, 2000, July 26, 2000 and January 26, 2005, 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 meetings on March 30, 2000, July 27, 2000 and January 27, 2005. 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 will announce the effective date of the proposed rule change in a Notice to Members. The effective date will be six months following publication of revised *OATS Reporting Technical Specifications* incorporating the proposed rule change, which will be published no later than 45 days following Commission approval.

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

(a) Purpose

Rule Filing History

On April 19, 2000, NASD filed with the Commission proposed rule change SR-NASD-00-23, proposed amendments to the OATS rules (the “original filing”). On September 5, 2000, NASD filed with the Commission Amendment No. 1 to SR-NASD-00-23 (“Amendment No. 1”), which proposed to make certain changes to the original filing. On September 26, 2000, the Commission published for comment the proposed

rule change in the Federal Register. On June 10, 2005, based on comments received in response to the publication of the proposed rule change in the Federal Register, NASD filed Amendment No. 2 to SR-NASD-00-23 (“Amendment No. 2”) to make certain changes as described herein. On June 27, 2005, the Commission published for comment Amendment No. 2 in the Federal Register. Based on comments received in response to the publication of Amendment No. 2 in the Federal Register, NASD is filing this Amendment No. 3 to SR-NASD-00-23 (“Amendment No. 3”) to respond to the comments received and to make certain changes as described herein.

Proposal

As described in Amendment No. 2, NASD is proposing amendments to NASD Rules 6950 through 6957 (“OATS Rules”) that would: (1) provide that members are required to capture and report both the time the order is received by the member from the customer and the time the order is received by the member’s trading desk or trading department, if those times are different; (2) exclude certain members from the definition of “Reporting Member” for those orders that meet specified conditions and are recorded and reported to OATS by another member; and (3) permit NASD to grant exemptive relief from the OATS reporting requirements in certain circumstances to members that meet specified criteria.²

² In addition, as described in Rule 6957(c), implementation of OATS requirements relating to manual orders (Phase III) is linked to SEC approval of SR-NASD-00-23.

Comments to the Proposed Rule Change

The Commission received six comment letters in response to the publication of Amendment No. 2 in the Federal Register.³ The commenters raised several issues relating to the proposed rule change, which are summarized and responded to below.

Implementation Issues Relating to the Proposed Rule Change

Several commenters suggested that the proposed implementation period of the proposed rule change should be extended, noting the significant technological changes needed to implement OATS reporting requirements for manual orders. Commenters also requested that NASD promptly publish the *OATS Reporting Technical Specifications* relating to the proposed rule change and that the implementation date be linked to its publication, and that NASD provide adequate time for testing.

In response to commenters and in recognition of the technological burdens that may be imposed on members as a result of this proposal, NASD is proposing to amend the text of Rule 6957(c) to provide an implementation date that is six months after publication of the *OATS Reporting Technical Specifications* relating to SR-NASD-00-23, rather than 120 days from Commission approval of the proposed rule change. NASD will publish the *OATS Reporting Technical Specifications* within 45 days of Commission approval. In addition, NASD will ensure that adequate time for testing is incorporated

³ Comment letters were submitted by the following: the Financial Information Forum; Liquidnet, Inc.; Wachtel & Co. Inc.; Wachovia Securities, LLC; Wulff, Hansen & Co. and the Securities Industry Association (SIA). Note: While there was one additional comment letter in response to the publication of Amendment No. 2 in the Federal Register, NASD believes that such comment letter inadvertently referenced this proposal and, instead, relates to another rule proposal.

into the implementation schedule and will make the testing environment available at least six weeks prior to the implementation date of the proposed rule change.

Exemptive Authority

Commenters generally supported the proposed rule change that would provide NASD with the authority to exempt certain members from OATS reporting for manual orders, but opposed the limited nature of NASD's exemptive authority. For example, one commenter suggested that an exemption be provided to any member that handles a small percentage of manual orders as compared to its overall volume, while another opposed the expiration of NASD's exemptive authority in five years.

One commenter suggested revising the condition that only members with annual revenues of less than \$2 million may request exemptive relief. Specifically, the commenter suggested that annual revenues for this purpose be based only on revenues from transactions in Nasdaq securities.

NASD is not proposing any changes to the proposed exemptive provision at this time. As discussed in Amendment No. 2, if the rule change is approved, NASD staff intends to review and analyze closely its exemptive authority and determine whether it would be appropriate to seek any changes, including the types of changes suggested by commenters to the proposed rule change.

Application to Preferred and Convertible Securities

One commenter suggested that NASD grant a carve-out or phased implementation for preferred securities and convertible securities, given the manual nature of the trading in these securities. While this may be true, NASD does not believe it poses any additional burdens than those associated with manual orders of other

securities. As noted above, NASD has proposed to extend the implementation time for the proposed rule change, which NASD believes will provide members adequate time for any technological or system changes required to address OATS reporting of manual orders in convertible and preferred securities.

Customer Order Receipt Time

One commenter indicated that requiring members to capture the time the order is received by the member from the customer would create unnecessary costs and burdens for members in establishing automated systems to capture OATS data. As noted in Amendment No. 2, although NASD recognizes that this requirement may impose additional costs on member firms, it is critical to NASD's surveillance systems and regulatory program that OATS capture the full lifecycle of an order within a firm and, in particular, the time that an order is received from the customer. As noted above, in recognition of these burdens, NASD has extended the implementation period of the proposed rule change.

Comments Requesting Clarification

One commenter requested clarification on how the term "trading desk" or "trading department" would apply, particularly for firms that do not have a trading desk. NASD previously has issued guidance relating to the term "trading department" and this same guidance will continue to apply with respect to the proposed rule change.⁴

⁴ See Letter from NASD Regulation to Charles R. Hood, dated July 30, 1998. Specifically, NASD stated that the term "trading department" is intended to refer to the function within the firm that is responsible for executing orders in Nasdaq equity securities. For an ECN, for example, this may be interpreted as either the trading system (where orders are executed automatically without trader intervention) or the trading department (where orders are executed with the assistance of traders).

One commenter requested clarification as to the time parameter associated with the term “immediately” in the context of order receipt time under the proposed rule change. As discussed in Amendment No. 2, if an order is not received immediately at the trading department, members would be required to capture information relating to the transfer of that order to the trading department under the order transmittal requirements of Rule 6954(c). NASD believes that where a member receives and handles an order within the same second, the member would not be required to report a Desk Report relating to that order.

One commenter requested clarification on order receipt time in the context of third party Internet service providers. The commenter indicated that a third party Internet service provider may capture orders on behalf of a member after trading hours and submit these orders in batch the next trading day. The commenter indicated that order receipt data is not transmitted by the third party Internet service provider as part of the order data. As with any requirement under the OATS Rules, the decision by a member to use a third party provider does not change the member’s obligation under the rules. As such, the member is required to capture order receipt time on all orders. The batching or other transmittal practices of a third party vendor would not change this requirement.

One commenter supported the proposed exclusion from the definition of “Reporting Member” under the OATS Rules, but suggested that NASD provide additional guidance in the future regarding the condition that the member does not direct or maintain control over subsequent routing or execution by the receiving Reporting Member. If the proposed rule change is approved, NASD will issue a Notice to Members announcing approval of the proposed rule change and, as part of that Notice, will provide

additional guidance on a number of issues, including the exclusion from the definition of “Reporting Member.”

Technical Amendments

NASD also is making technical amendments to Rule 6957(c) to clarify that the OATS order information required under Rule 6954(b)(4) and (5) and the OATS order transmittal requirements under Rule 6954(c)(1) apply to manual orders. As stated in Amendment No. 2, the proposed rule change applies to both electronic and manual orders. As such, NASD clearly intended to have the inter-departmental order transmittal requirements apply to manual orders. Similarly, department identification information concerning where a manual order was originated also was intended to be included. As such, NASD is eliminating the prior exclusion of this information from the OATS requirements for manual orders.

(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. NASD believes that the proposed rule change will enhance NASD’s ability to conduct surveillance and investigations of member firms for violations of NASD’s and other applicable rules.

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

Written comments on the proposed rule change were solicited by the Commission in response to Amendment No. 2 to SR-NASD-00-23, which proposed certain changes to the OATS Rules as described therein. The Commission received six comment letters in response to the Federal Register publication of Amendment No. 2 to SR-NASD-00-23. The comments are summarized above.

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)

NASD requests the Commission to find good cause pursuant to Section 19(b)(2) of the Act for approving the proposed rule change prior to the 30th day after its publication in the Federal Register.

Because NASD believes the proposed rule change encompasses a proposal that was previously proposed and noticed for comment in SR-NASD-00-23 and will clarify the OATS reporting requirements for manual orders, NASD requests the Commission to accelerate the effectiveness of the proposed rule change prior to the 30th day after its publication in the Federal Register.

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 4. Exhibit 4 shows the full text of rule change marking changes from Amendment No. 2, with Amendment No. 2 changes shown as if adopted, and the new language in this Amendment No. 3 marked to show additions and deletions.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-NASD-00-23)
SELF-REGULATORY ORGANIZATIONS

Proposed Rule Change by National Association of Securities Dealers, Inc.
Relating to Amendments to Order Audit Trail System Rules

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”) Amendment No. 3 to the proposed rule change³ 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. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

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

NASD is proposing amendments to NASD’s Order Audit Trail System (OATS) rules and amendments responsive to the comments received in response to the publication

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ On April 19, 2000, NASD filed SR-NASD-00-23 with the Commission. On September 5, 2000, NASD filed with the Commission Amendment No. 1 to SR-NASD-00-23 that proposed to make certain changes to the original filing. On June 10, 2005, NASD filed with the Commission Amendment No. 2 to SR-NASD-00-23 that proposed to make additional changes to the filing.

of the proposed rule change in the Federal Register where appropriate.⁴

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

* * * * *

6951. Definitions

For purposes of Rules 6950 through 6957:

(a) through (m) No Change.

(n) “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.

A member shall not be considered a Reporting Member in connection with an order, if the following conditions are met:

(1) the member engages in a non-discretionary order routing process, pursuant to which it immediately routes, by electronic or other means, all of its orders to a single receiving Reporting Member;

(2) the member does not direct and does not maintain control over subsequent routing or execution by the receiving Reporting Member;

(3) the receiving Reporting Member records and reports all information required under Rules 6954 and 6955 with respect to the order; and

(4) the member has a written agreement with the receiving Reporting Member specifying the respective functions and responsibilities of each party to effect full compliance with the requirements of Rules 6954 and 6955.

⁴ See Exchange Act Release No. 51890 (June 21, 2005), 70 FR 36986 (June 27, 2005).

* * * * *

6954. Recording of Order Information

(a) No Change.

(b) Order Origination and Receipt

Unless otherwise indicated, the following order information must be recorded under this Rule when an order is received or originated. For purposes of this Rule, the order origination or receipt time is the time the order is received from the customer.

(1) through (18) No Change.

(c) Order Transmittal

Order information required to be recorded under this Rule when an order is transmitted includes the following.

(1) When a Reporting Member transmits an order to a[nother] department within the member, [other than to the trading department,] the Reporting Member shall record:

(A) through (C) No Change.

(D) an identification of the department and nature of the department to which the order was transmitted, [and]

(E) the date and time the order was received by that department,

(F) the number of shares to which the transmission applies, and

(G) any special handling requests.[:]

(2) through (6) No Change.

(d) No Change.

* * * * *

6955. Order Data Transmission Requirements

(a) through (c) No Change.

(d) Exemptions

(1) Pursuant to the Rule 9600 Series, the staff, for good cause shown after taking into consideration all relevant factors, may exempt, subject to specified terms and conditions, a member from the order data transmission requirements of this Rule for manual orders, if such exemption is consistent with the protection of investors and the public interest, and the member meets the following criteria:

(A) the member and current control affiliates and associated persons of the member have not been subject within the last five years to any final disciplinary action, and within the last ten years to any disciplinary action involving fraud;

(B) the member has annual revenues of less than \$2 million;

(C) the member does not conduct any market making activities in Nasdaq Stock Market equity securities;

(D) the member does not execute principal transactions with its customers (with limited exception for principal transactions executed pursuant to error corrections); and

(E) the member does not conduct clearing or carrying activities for other firms.

(2) An exemption provided pursuant to this paragraph (d) shall not exceed

a period of two years. At or prior to the expiration of a grant of exemptive relief under this paragraph (d), a member meeting the criteria set forth in paragraph (d)(1) may request, pursuant to the Rule 9600 Series, a subsequent exemption, which will be considered at the time of the request, consistent with the protection of investors and the public interest.

(3) This paragraph shall be in effect until [five years from the effective date of the proposed rule change].

* * * * *

6957. Effective Date

The requirements of the Order Audit Trail System shall be effective in accordance with the following schedule:

(a) and (b) No Change.

(c) Manual Orders

The requirements of the Order Audit Trail System shall be effective six months after publication of the revised *OATS Reporting Technical Specifications* relating to [120 days after SEC approval of] SR-NASD-00-23, for all manual orders, provided that firms shall be required to report information item (18) specified in Rule 6954(b) only to the extent such item is available to them[and shall not be required to record and report information items (4) and (5) specified in Rule 6954(b) and information item (1) specified in Rule 6954(c)].

(d) No Change.

* * * * *

9600. PROCEDURES FOR EXEMPTIONS

9610. Application

(a) Where to File

A member seeking an exemption from Rule 1021, 1022, 1070, 2210, 2320, 2340, 2520, 2710, 2720, 2810, 2850, 2851, 2860, Interpretive Material 2860-1, 3010(b)(2), 3020, 3210, 3230, 3350, 6955, 8211, 8212, 8213, 11870, or 11900, Interpretive Material 2110-1, or Municipal Securities Rulemaking Board Rule G-37 shall file a written application with the appropriate department or staff of NASD and provide a copy of the application to the Office of General Counsel of NASD.

(b) and (c) No Change.

* * * * *

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

Rule Filing History

On April 19, 2000, NASD filed with the Commission proposed rule change SR-NASD-00-23, proposed amendments to the OATS rules (the "original filing"). On September 5, 2000, NASD filed with the Commission Amendment No. 1 to SR-NASD-

00-23 (“Amendment No. 1”), which proposed to make certain changes to the original filing. On September 26, 2000, the Commission published for comment the proposed rule change in the Federal Register. On June 10, 2005, based on comments received in response to the publication of the proposed rule change in the Federal Register, NASD filed Amendment No. 2 to SR-NASD-00-23 (“Amendment No. 2”) to make certain changes as described herein. On June 27, 2005, the Commission published for comment Amendment No. 2 in the Federal Register. Based on comments received in response to the publication of Amendment No. 2 in the Federal Register, NASD is filing this Amendment No. 3 to SR-NASD-00-23 (“Amendment No. 3”) to respond to the comments received and to make certain changes as described herein.

Proposal

As described in Amendment No. 2, NASD is proposing amendments to NASD Rules 6950 through 6957 (“OATS Rules”) that would: (1) provide that members are required to capture and report both the time the order is received by the member from the customer and the time the order is received by the member’s trading desk or trading department, if those times are different; (2) exclude certain members from the definition of “Reporting Member” for those orders that meet specified conditions and are recorded and reported to OATS by another member; and (3) permit NASD to grant exemptive relief from the OATS reporting requirements in certain circumstances to members that meet specified criteria.⁵

⁵ In addition, as described in Rule 6957(c), implementation of OATS requirements relating to manual orders (Phase III) is linked to SEC approval of SR-NASD-00-23.

Comments to the Proposed Rule Change

The Commission received six comment letters in response to the publication of Amendment No. 2 in the Federal Register.⁶ The commenters raised several issues relating to the proposed rule change, which are summarized and responded to below.

Implementation Issues Relating to the Proposed Rule Change

Several commenters suggested that the proposed implementation period of the proposed rule change should be extended, noting the significant technological changes needed to implement OATS reporting requirements for manual orders. Commenters also requested that NASD promptly publish the *OATS Reporting Technical Specifications* relating to the proposed rule change and that the implementation date be linked to its publication, and that NASD provide adequate time for testing.

In response to commenters and in recognition of the technological burdens that may be imposed on members as a result of this proposal, NASD is proposing to amend the text of Rule 6957(c) to provide an implementation date that is six months after publication of the *OATS Reporting Technical Specifications* relating to SR-NASD-00-23, rather than 120 days from Commission approval of the proposed rule change. NASD will publish the *OATS Reporting Technical Specifications* within 45 days of Commission approval. In addition, NASD will ensure that adequate time for testing is incorporated

⁶ Comment letters were submitted by the following: the Financial Information Forum; Liquidnet, Inc.; Wachtel & Co. Inc.; Wachovia Securities, LLC; Wulff, Hansen & Co. and the Securities Industry Association (SIA). Note: While there was one additional comment letter in response to the publication of Amendment No. 2 in the Federal Register, NASD believes that such comment letter inadvertently referenced this proposal and, instead, relates to another rule proposal.

into the implementation schedule and will make the testing environment available at least six weeks prior to the implementation date of the proposed rule change.

Exemptive Authority

Commenters generally supported the proposed rule change that would provide NASD with the authority to exempt certain members from OATS reporting for manual orders, but opposed the limited nature of NASD's exemptive authority. For example, one commenter suggested that an exemption be provided to any member that handles a small percentage of manual orders as compared to its overall volume, while another opposed the expiration of NASD's exemptive authority in five years.

One commenter suggested revising the condition that only members with annual revenues of less than \$2 million may request exemptive relief. Specifically, the commenter suggested that annual revenues for this purpose be based only on revenues from transactions in Nasdaq securities.

NASD is not proposing any changes to the proposed exemptive provision at this time. As discussed in Amendment No. 2, if the rule change is approved, NASD staff intends to review and analyze closely its exemptive authority and determine whether it would be appropriate to seek any changes, including the types of changes suggested by commenters to the proposed rule change.

Application to Preferred and Convertible Securities

One commenter suggested that NASD grant a carve-out or phased implementation for preferred securities and convertible securities, given the manual nature of the trading in these securities. While this may be true, NASD does not believe it poses any additional burdens than those associated with manual orders of other securities. As noted

above, NASD has proposed to extend the implementation time for the proposed rule change, which NASD believes will provide members adequate time for any technological or system changes required to address OATS reporting of manual orders in convertible and preferred securities.

Customer Order Receipt Time

One commenter indicated that requiring members to capture the time the order is received by the member from the customer would create unnecessary costs and burdens for members in establishing automated systems to capture OATS data. As noted in Amendment No. 2, although NASD recognizes that this requirement may impose additional costs on member firms, it is critical to NASD's surveillance systems and regulatory program that OATS capture the full lifecycle of an order within a firm and, in particular, the time that an order is received from the customer. As noted above, in recognition of these burdens, NASD has extended the implementation period of the proposed rule change.

Comments Requesting Clarification

One commenter requested clarification on how the term "trading desk" or "trading department" would apply, particularly for firms that do not have a trading desk. NASD previously has issued guidance relating to the term "trading department" and this same guidance will continue to apply with respect to the proposed rule change.⁷

⁷ See Letter from NASD Regulation to Charles R. Hood, dated July 30, 1998. Specifically, NASD stated that the term "trading department" is intended to refer to the function within the firm that is responsible for executing orders in Nasdaq equity securities. For an ECN, for example, this may be interpreted as either the trading system (where orders are executed automatically without trader intervention) or the trading department (where orders are executed with the assistance of traders).

One commenter requested clarification as to the time parameter associated with the term “immediately” in the context of order receipt time under the proposed rule change. As discussed in Amendment No. 2, if an order is not received immediately at the trading department, members would be required to capture information relating to the transfer of that order to the trading department under the order transmittal requirements of Rule 6954(c). NASD believes that where a member receives and handles an order within the same second, the member would not be required to report a Desk Report relating to that order.

One commenter requested clarification on order receipt time in the context of third party Internet service providers. The commenter indicated that a third party Internet service provider may capture orders on behalf of a member after trading hours and submit these orders in batch the next trading day. The commenter indicated that order receipt data is not transmitted by the third party Internet service provider as part of the order data. As with any requirement under the OATS Rules, the decision by a member to use a third party provider does not change the member’s obligation under the rules. As such, the member is required to capture order receipt time on all orders. The batching or other transmittal practices of a third party vendor would not change this requirement.

One commenter supported the proposed exclusion from the definition of “Reporting Member” under the OATS Rules, but suggested that NASD provide additional guidance in the future regarding the condition that the member does not direct or maintain control over subsequent routing or execution by the receiving Reporting Member. If the proposed rule change is approved, NASD will issue a Notice to Members announcing approval of the proposed rule change and, as part of that Notice, will provide

additional guidance on a number of issues, including the exclusion from the definition of “Reporting Member.”

Technical Amendments

NASD also is making technical amendments to Rule 6957(c) to clarify that the OATS order information required under Rule 6954(b)(4) and (5) and the OATS order transmittal requirements under Rule 6954(c)(1) apply to manual orders. As stated in Amendment No. 2, the proposed rule change applies to both electronic and manual orders. As such, NASD clearly intended to have the inter-departmental order transmittal requirements apply to manual orders. Similarly, department identification information concerning where a manual order was originated also was intended to be included. As such, NASD is eliminating the prior exclusion of this information from the OATS requirements for manual orders.

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. NASD believes that the proposed rule change will enhance NASD’s ability to conduct surveillance and investigations of member firms for violations of NASD’s and other applicable rules.

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

Written comments on the proposed rule change were solicited by the Commission in response to Amendment No. 2 to SR-NASD-00-23, which proposed certain changes to the OATS Rules as described therein. The Commission received six comment letters in response to the Federal Register publication of Amendment No. 2 to SR-NASD-00-23. The comments are summarized above.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

NASD has requested that the Commission find good cause pursuant to Section 19(b)(2) of the Act for approving the proposed rule change prior to the 30th day after publication in the Federal Register. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to NASD and, in particular, the requirements of Section 15A of the Act and the rules and regulations thereunder. The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in that accelerated approval will clarify the OATS reporting requirements for manual orders.

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-00-23 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 20549-0609.

All submissions should refer to File Number SR-NASD-00-23. 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-00-23 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.⁸

Secretary

⁸ 17 CFR 200.30-3(a)(12).

EXHIBIT 4

Below is the text of the proposed rule change marked to indicate additions and deletions from the text as proposed on June 10, 2005 in Amendment No. 2, with the Amendment No. 2 shown as if adopted.

Proposed new language in this Amendment No. 3 is double-underlined.
Proposed new deletions in this Amendment No. 3 are in bold double brackets.

* * * * *

6951. Definitions

For purposes of Rules 6950 through 6957:

(a) through (m) No Change.

(n) “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.

A member shall not be considered a Reporting Member in connection with an order, if the following conditions are met:

(1) the member engages in a non-discretionary order routing process, pursuant to which it immediately routes, by electronic or other means, all of its orders to a single receiving Reporting Member;

(2) the member does not direct and does not maintain control over subsequent routing or execution by the receiving Reporting Member;

(3) the receiving Reporting Member records and reports all information required under Rules 6954 and 6955 with respect to the order; and

(4) the member has a written agreement with the receiving Reporting Member specifying the respective functions and responsibilities of each party to effect full compliance with the requirements of Rules 6954 and 6955.

* * * * *

6954. Recording of Order Information

(a) No Change.

(b) Order Origination and Receipt

Unless otherwise indicated, the following order information must be recorded under this Rule when an order is received or originated. For purposes of this Rule, the order origination or receipt time is the time the order is received from the customer.

(1) through (18) No Change.

(c) Order Transmittal

Order information required to be recorded under this Rule when an order is transmitted includes the following.

(1) When a Reporting Member transmits an order to a department within the member, the Reporting Member shall record:

(A) through (C) No Change.

(D) an identification of the department and nature of the department to which the order was transmitted,

(E) the date and time the order was received by that department,

(F) the number of shares to which the transmission applies, and

(G) any special handling requests.

(2) through (6) No Change.

(d) No Change.

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6955. Order Data Transmission Requirements

(a) through (c) No Change.

(d) Exemptions

(1) Pursuant to the Rule 9600 Series, the staff, for good cause shown after taking into consideration all relevant factors, may exempt, subject to specified terms and conditions, a member from the order data transmission requirements of this Rule for manual orders, if such exemption is consistent with the protection of investors and the public interest, and the member meets the following criteria:

(A) the member and current control affiliates and associated persons of the member have not been subject within the last five years to any final disciplinary action, and within the last ten years to any disciplinary action involving fraud;

(B) the member has annual revenues of less than \$2 million;

(C) the member does not conduct any market making activities in Nasdaq Stock Market equity securities;

(D) the member does not execute principal transactions with its customers (with limited exception for principal transactions executed pursuant to error corrections); and

(E) the member does not conduct clearing or carrying activities for other firms.

(2) An exemption provided pursuant to this paragraph (d) shall not exceed a period of two years. At or prior to the expiration of a grant of exemptive relief under this paragraph (d), a member meeting the criteria set forth in paragraph

(d)(1) may request, pursuant to the Rule 9600 Series, a subsequent exemption, which will be considered at the time of the request, consistent with the protection of investors and the public interest.

(3) This paragraph shall be in effect until [five years from the effective date of the proposed rule change].

* * * * *

6957. Effective Date

The requirements of the Order

Audit Trail System shall be effective in accordance with the following schedule:

(a) No Change.

(b) No Change.

(c) Manual Orders

The requirements of the Order Audit Trail System shall be effective six months after publication of the revised *OATS Reporting Technical Specifications* relating to[[120 days after SEC approval of]] SR-NASD-00-23, for all manual orders, provided that firms shall be required to report information item (18) specified in Rule 6954(b) only to the extent such item is available to them[[and shall not be required to record and report information items (4) and (5) specified in Rule 6954(b) and information item (1) specified in Rule 6954(c)]]].

(d) No Change.

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9600. PROCEDURES FOR EXEMPTIONS

9610. Application

(a) Where to File

A member seeking an exemption from Rule 1021, 1022, 1070, 2210, 2320, 2340, 2520, 2710, 2720, 2810, 2850, 2851, 2860, Interpretive Material 2860-1, 3010(b)(2), 3020, 3210, 3230, 3350, 6955, 8211, 8212, 8213, 11870, or 11900, Interpretive Material 2110-1, or Municipal Securities Rulemaking Board Rule G-37 shall file a written application with the appropriate department or staff of NASD and provide a copy of the application to the Office of General Counsel of NASD.

(b) and (c) No Change.