

OMB APPROVAL

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Page 1 of 26

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

File No. SR - 2006 - 055

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) ☐

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)

Pilot ☐ Extension of Time Period
for Commission Action ☐ Date Expires

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).

Amend NASD rules to require members to report all transactions that must be reported to NASD and that are subject to a regulatory transaction fee pursuant to Section 3 of Schedule A to the NASD By-Laws in an automated manner.

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 Kathleen Last Name O'Mara
Title Associate General Counsel
E-mail kathleen.omara@nasd.com
Telephone (202) 728-8056 Fax (202) 728-8264

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 04/21/2006

By Patrice Gliniecki
(Name)

Senior Vice President and Deputy General Counsel

(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.

PATRICE GLINIECKI,

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFT website.

Form 19b-4 Information

Add

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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

Add

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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

Add

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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

Add

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Exhibit Sent As Paper Document

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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

Add

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View

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

Add

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View

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

Add

Remove

View

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"),¹ the National Association of Securities Dealers, Inc. ("NASD") is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to require members to report all transactions that must be reported to NASD and that are subject to a regulatory transaction fee pursuant to Section 3 of Schedule A to the NASD By-Laws to the Nasdaq Market Center ("NMC") and/or the Trade Reporting and Comparison Service ("TRACS"); provided, however, that odd-lot transactions, transactions where the buyer and seller have agreed to a price substantially unrelated to the current market for the security (also referred to as "away from the market sales"), and purchases or sales of securities effected upon the exercise of an over-the-counter ("OTC") option, as well as other identified transactions, shall not be reported for publication purposes. In addition, NASD is proposing new provisions in Rules 6130 and 6130A that expressly require members to report odd-lot transactions, away from the market sales, and OTC options with a special indicator denoting that such transactions are reported in accordance with Section 3 of Schedule A to the NASD By-Laws. Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.²

¹ 15 U.S.C. 78s(b)(1).

² It should be noted that NASD has filed another proposed rule change, SR-NASD-2005-087, which, among other things, proposed a new Trade Reporting Facility LLC. If this filing is approved prior to that filing, the Trade Reporting Facility rules will be amended to make conforming changes set forth in this rule proposal. However, if SR-NASD-2005-087 is approved prior to the approval of this filing,

* * * * *

SCHEDULE A TO NASD BY-LAWS

* * * * *

Section 3 — Regulatory Transaction Fee

Each member shall be assessed a regulatory transaction fee. The amount shall be determined periodically in accordance with Section 31 of the Act. Transactions assessable under this Section 3 that must be reported to NASD shall be reported in an automated manner.

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4000. THE NASDAQ STOCK MARKET

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4600. NASDAQ MARKET MAKER REQUIREMENTS

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4630. Reporting Transactions in Nasdaq National Market Securities

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4632. Transaction Reporting

(a) through (d) No Change.

(e) Transactions Not [Required] To Be Reported For Publication Purposes

The following types of transactions shall not be reported for publication purposes:

(1) through (6) No Change.

this filing will be amended to make conforming changes to the Trade Reporting Facility rules.

(f) through (g) No Change.

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4640. Reporting Transactions in Nasdaq Capital Market Securities

* * * * *

4642. Transaction Reporting

(a) through (d) No Change.

(e) Transactions Not [Required] To Be Reported For Publication Purposes

The following types of transactions shall not be reported for publication purposes:

(1) through (5) No Change.

(f) through (g) No Change.

* * * * *

4000A. NASD ALTERNATIVE DISPLAY FACILITY

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4600A. TRADING IN NASDAQ SECURITIES

* * * * *

4632A. Transactions Reported by Members

(a) through (j) No Change.

(k) Transactions Not To Be Reported To NASD For Publication Purposes

The following types of transactions effected by NASD members shall not be reported to TRACS for publication purposes:

(1) through (5) No Change.

(l) No Change.

* * * * *

6000. NASD SYSTEMS AND PROGRAMS

6100. TRADE REPORTING SERVICE

* * * * *

6130. Trade Report Input

(a) through (f) No Change.

(g) Reporting Certain Transactions for Purposes of Regulatory Transaction

Fee Assessment

The following types of transactions that are assessed a regulatory transaction fee in accordance with Section 3 of Schedule A to the NASD By-Laws must be reported to the Nasdaq Market Center as prescribed below. Transactions must be submitted to the Nasdaq Market Center by 6:30 p.m. Eastern Time (or the end of the Nasdaq Market Center reporting session that is in effect at that time).

(1) Odd-Lot Transactions

Transactions for less than a normal unit of trading shall be reported to the Nasdaq Market Center with a modifier of .RO to designate the transaction as submitted for purposes of the regulatory transaction fee under Section 3 of Schedule A to the NASD By-Laws. Transactions may be entered as clearing or non-clearing.

(2) Away From the Market Sales

Transactions where the buyer and seller have agreed to trade at a price substantially unrelated to the current market for the security, and consideration is given, shall be reported to the Nasdaq Market Center with a modifier of .RA to

designate the transaction as submitted for purposes of the regulatory transaction fee under Section 3 of Schedule A to the NASD By-Laws. Transactions may be entered as clearing or non-clearing.

(3) Exercises of OTC Options

Transactions effected pursuant to the exercise of an OTC option shall be reported to the Nasdaq Market Center with a modifier of .RX to designate the transaction as submitted for purposes of the regulatory transaction fee under Section 3 of Schedule A to the NASD By-Laws. Transactions may be entered as clearing or non-clearing.

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6400. REPORTING TRANSACTIONS IN LISTED SECURITIES

* * * * *

6420. Transaction Reporting

(a) through (d) No Change.

(e) Transactions Not [Required] To Be Reported For Publication Purposes

The following types of transactions shall not be reported for inclusion on the Consolidated Tape:

(1) through (8) No Change.

(f) No Change.

* * * * *

6620. Transaction Reporting

(a) through (d) No Change.

(e) Transactions Not [Required] To Be Reported For Publication Purposes

The following types of transactions shall not be reported for publication purposes:

(1) through (4) No Change.

(f) No Change.

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6000A. NASD ADF SYSTEMS AND PROGRAMS

6100A. TRACS TRADE COMPARISON SERVICE

* * * * *

6130A. Trade Report Input

(a) through (b) No Change.

(c) Reporting Certain Transactions for Purposes of Regulatory Transaction

Fee Assessment

The following types of transactions that are assessed a regulatory transaction fee in accordance with Section 3 of Schedule A to the NASD By-Laws must be reported to TRACS as prescribed below. Transactions must be submitted to TRACS by 6:30 p.m. Eastern Time (or the end of the TRACS reporting session that is in effect at that time).

(1) Odd-Lot Transactions

Transactions for less than a normal unit of trading shall be reported to TRACS with a modifier of .RO to designate the transaction as submitted for purposes of the regulatory transaction fee under Section 3 of Schedule A to the NASD By-Laws. Transactions may be entered as clearing or non-clearing.

(2) Away From the Market Sales

Transactions where the buyer and seller have agreed to trade at a price substantially unrelated to the current market for the security, and consideration is

given, shall be reported to TRACS with a modifier of .RA to designate the transaction as submitted for purposes of the regulatory transaction fee under Section 3 of Schedule A to the NASD By-Laws. Transactions may be entered as clearing or non-clearing.

(3) Exercises of OTC Options

Transactions effected pursuant to the exercise of an OTC option shall be reported to TRACS with a modifier of .RX to designate the transaction as submitted for purposes of the regulatory transaction fee under Section 3 of Schedule A to the NASD By-Laws. Transactions may be entered as clearing or non-clearing.

* * * * *

(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 November 30, 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 reviewed the proposed rule change at its meeting on December 1, 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 to be published no later than 60 days following Commission approval. The effective date will be at least 90 days following publication of the Notice to Members announcing Commission approval to allow firms sufficient time to make any necessary systems changes.

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

(a) Purpose

Pursuant to Section 31 of the Act, NASD and the national securities exchanges are required to pay transaction fees and assessments to the SEC that are designed to recover the costs related to the government's supervision and regulation of the securities markets and securities professionals. NASD obtains its Section 31 fees and assessments from its membership, in accordance with Section 3 of Schedule A to the NASD By-Laws ("Section 3"). Most of the transactions that are assessable under Section 3 are reported to NASD through automated facilities, because most transactions must be reported to NMC or TRACS pursuant to NASD trade reporting rules. NASD is able to use the transaction data reported to NMC and TRACS for Section 3 billing purposes. Member firms, however, are required to manually self-report covered sales of odd-lots, away from the market sales, and the exercise of OTC options because these transactions are not otherwise required to be reported to NMC or TRACS.

To improve NASD's programs related to compliance with Section 31 of the Act and Rule 31 thereunder, NASD is proposing to require member firms to report all

covered securities transactions that must be reported to NASD and that are assessed under Section 3 in an automated manner. While the current manual self-reporting process has allowed NASD to meet its obligations under Section 31 of the Act, there have been instances when some members filed their self-reporting form late or amended previous forms in later months to include additional covered sales volume. NASD believes that requiring automated reporting of such covered transactions will facilitate efficient, accurate, and timely reporting. Automated reporting will also reduce the burden on members that results from manually reporting certain transactions to NASD. In addition, the mandatory reporting of odd-lots and other transactions will enhance the regulatory audit trail while not providing distortive information to the publicly disseminated tape.

To fully automate NASD's procedures for assessing the regulatory transaction fee, NASD is proposing to amend: (1) Section 3 to create an affirmative obligation to report all covered sales that must be reported to NASD for purposes of Section 3 in an automated manner; (2) Rules 6130 and 6130A to require that members report all transactions reportable to NASD and subject to the regulatory transaction fee pursuant to Section 3 to NMC or TRACS and to identify certain transactions submitted specifically for a regulatory transaction fee assessment with a special indicator denoting their purpose; and (3) Rules 4632, 4642, 4632A, 6420, and 6620 governing trade reporting that currently prohibit member firms from reporting odd-lot transactions, away from the market sales, and OTC options, as well as other identified transactions, to clarify that the

prohibition found in the transaction reporting rules is limited to the submission of a transaction for publication purposes.³

As noted in Item 2 of this filing, NASD will announce the effective date of the proposed rule change in a Notice to Members to be published no later than 60 days following Commission approval. The effective date will be at least 90 days following publication of the Notice to Members announcing Commission approval to allow firms sufficient time to make any necessary systems changes.

(b) Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁴ 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 requiring members to report all transactions that must be reported to NASD and are subject to the regulatory transaction fee in an automated manner would ensure more accurate and timely reporting of such transactions and would reduce the burden on members that results from manually reporting certain transactions.

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

³ The proposed amendments to Rules 4632A and 6420 solely amend the headings of Rules 4632A(k) and 6420(e). The text of these rules does not need to be amended because it already states that the prohibition from reporting the identified transactions is limited to the submission of a transaction for publication purposes (or in the case of listed securities, for inclusion on the Consolidated Tape).

⁴ 15 U.S.C. 78o-3(b)(6).

competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Written comments were neither solicited nor received.

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 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-NASD-2006-055)

Self-Regulatory Organizations: National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change Relating to Requiring Members to Report All Transactions that Must be Reported to NASD and are Subject to Regulatory Transaction Fee to the Nasdaq Market Center and/or the Trade Reporting and Comparison Service

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 Section 3 of Schedule A to the NASD By-Laws, to require members to report all transactions that must be reported to NASD and that are subject to a regulatory transaction fee pursuant to Section 3 of Schedule A to the NASD By-Laws to the Nasdaq Market Center ("NMC") and/or the Trade Reporting and Comparison Service ("TRACS"); provided, however, that odd-lot transactions, transactions where the buyer and seller have agreed to a price substantially unrelated to

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

the current market for the security (also referred to as "away from the market sales"), and purchases or sales of securities effected upon the exercise of an over-the-counter ("OTC") option, as well as other identified transactions, shall not be reported for publication purposes. In addition, NASD is proposing new provisions in Rules 6130 and 6130A that expressly require members to report odd-lot transactions, away from the market sales, and OTC options with a special indicator denoting that such transactions are reported in accordance with Section 3 of Schedule A to the NASD By-Laws. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.³

* * * * *

SCHEDULE A TO NASD BY-LAWS

* * * * *

Section 3 — Regulatory Transaction Fee

Each member shall be assessed a regulatory transaction fee. The amount shall be determined periodically in accordance with Section 31 of the Act. Transactions assessable under this Section 3 that must be reported to NASD shall be reported in an automated manner.

* * * * *

4000. THE NASDAQ STOCK MARKET

³ It should be noted that NASD has filed another proposed rule change, SR-NASD-2005-087, which, among other things, proposed a new Trade Reporting Facility LLC. If this filing is approved prior to that filing, the Trade Reporting Facility rules will be amended to make conforming changes set forth in this rule proposal. However, if SR-NASD-2005-087 is approved prior to the approval of this filing, this filing will be amended to make conforming changes to the Trade Reporting Facility rules.

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4600. NASDAQ MARKET MAKER REQUIREMENTS

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4630. Reporting Transactions in Nasdaq National Market Securities

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4632. Transaction Reporting

(a) through (d) No Change.

(e) Transactions Not [Required] To Be Reported For Publication Purposes

The following types of transactions shall not be reported for publication purposes:

(1) through (6) No Change.

(f) through (g) No Change.

* * * * *

4640. Reporting Transactions in Nasdaq Capital Market Securities

* * * * *

4642. Transaction Reporting

(a) through (d) No Change.

(e) Transactions Not [Required] To Be Reported For Publication Purposes

The following types of transactions shall not be reported for publication purposes:

(1) through (5) No Change.

(f) through (g) No Change.

* * * * *

4000A. NASD ALTERNATIVE DISPLAY FACILITY

* * * * *

4600A. TRADING IN NASDAQ SECURITIES

* * * * *

4632A. Transactions Reported by Members

(a) through (j) No Change.

(k) Transactions Not To Be Reported To NASD For Publication Purposes

The following types of transactions effected by NASD members shall not be reported to TRACS for publication purposes:

(1) through (5) No Change.

(l) No Change.

* * * * *

6000. NASD SYSTEMS AND PROGRAMS

6100. TRADE REPORTING SERVICE

* * * * *

6130. Trade Report Input

(a) through (f) No Change.

(g) Reporting Certain Transactions for Purposes of Regulatory Transaction

Fee Assessment

The following types of transactions that are assessed a regulatory transaction fee in accordance with Section 3 of Schedule A to the NASD By-Laws must be reported to the Nasdaq Market Center as prescribed below. Transactions must be submitted to the Nasdaq Market Center by 6:30 p.m. Eastern Time (or the end of the Nasdaq Market Center reporting session that is in effect at that time).

(1) Odd-Lot Transactions

Transactions for less than a normal unit of trading shall be reported to the Nasdaq Market Center with a modifier of .RO to designate the transaction as submitted for purposes of the regulatory transaction fee under Section 3 of Schedule A to the NASD By-Laws. Transactions may be entered as clearing or non-clearing.

(2) Away From the Market Sales

Transactions where the buyer and seller have agreed to trade at a price substantially unrelated to the current market for the security, and consideration is given, shall be reported to the Nasdaq Market Center with a modifier of .RA to designate the transaction as submitted for purposes of the regulatory transaction fee under Section 3 of Schedule A to the NASD By-Laws. Transactions may be entered as clearing or non-clearing.

(3) Exercises of OTC Options

Transactions effected pursuant to the exercise of an OTC option shall be reported to the Nasdaq Market Center with a modifier of .RX to designate the transaction as submitted for purposes of the regulatory transaction fee under Section 3 of Schedule A to the NASD By-Laws. Transactions may be entered as clearing or non-clearing.

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6400. REPORTING TRANSACTIONS IN LISTED SECURITIES

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6420. Transaction Reporting

(a) through (d) No Change.

(e) Transactions Not [Required] To Be Reported For Publication Purposes

The following types of transactions shall not be reported for inclusion on the Consolidated Tape:

(1) through (8) No Change.

(f) No Change.

* * * *

6620. Transaction Reporting

(a) through (d) No Change.

(e) Transactions Not [Required] To Be Reported For Publication Purposes

The following types of transactions shall not be reported for publication purposes:

(1) through (4) No Change.

(f) No Change.

* * * * *

6000A. NASD ADF SYSTEMS AND PROGRAMS

6100A. TRACS TRADE COMPARISON SERVICE

* * * * *

6130A. Trade Report Input

(a) through (b) No Change.

(c) Reporting Certain Transactions for Purposes of Regulatory Transaction

Fee Assessment

The following types of transactions that are assessed a regulatory transaction fee in accordance with Section 3 of Schedule A to the NASD By-Laws must be reported to

TRACS as prescribed below. Transactions must be submitted to TRACS by 6:30 p.m. Eastern Time (or the end of the TRACS reporting session that is in effect at that time).

(1) Odd-Lot Transactions

Transactions for less than a normal unit of trading shall be reported to TRACS with a modifier of .RO to designate the transaction as submitted for purposes of the regulatory transaction fee under Section 3 of Schedule A to the NASD By-Laws. Transactions may be entered as clearing or non-clearing.

(2) Away From the Market Sales

Transactions where the buyer and seller have agreed to trade at a price substantially unrelated to the current market for the security, and consideration is given, shall be reported to TRACS with a modifier of .RA to designate the transaction as submitted for purposes of the regulatory transaction fee under Section 3 of Schedule A to the NASD By-Laws. Transactions may be entered as clearing or non-clearing.

(3) Exercises of OTC Options

Transactions effected pursuant to the exercise of an OTC option shall be reported to TRACS with a modifier of .RX to designate the transaction as submitted for purposes of the regulatory transaction fee under Section 3 of Schedule A to the NASD By-Laws. Transactions may be entered as clearing or non-clearing.

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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

Pursuant to Section 31 of the Act, NASD and the national securities exchanges are required to pay transaction fees and assessments to the SEC that are designed to recover the costs related to the government's supervision and regulation of the securities markets and securities professionals. NASD obtains its Section 31 fees and assessments from its membership, in accordance with Section 3 of Schedule A to the NASD By-Laws ("Section 3"). Most of the transactions that are assessable under Section 3 are reported to NASD through automated facilities, because most transactions must be reported to NMC or TRACS pursuant to NASD trade reporting rules. NASD is able to use the transaction data reported to NMC and TRACS for Section 3 billing purposes. Member firms, however, are required to manually self-report covered sales of odd-lots, away from the market sales, and the exercise of OTC options because these transactions are not otherwise required to be reported to NMC or TRACS.

To improve NASD's programs related to compliance with Section 31 of the Act and Rule 31 thereunder, NASD is proposing to require member firms to report all covered securities transactions that must be reported to NASD and that are assessed

under Section 3 in an automated manner. While the current manual self-reporting process has allowed NASD to meet its obligations under Section 31 of the Act, there have been instances when some members filed their self-reporting form late or amended previous forms in later months to include additional covered sales volume. NASD believes that requiring automated reporting of such covered transactions will facilitate efficient, accurate, and timely reporting. Automated reporting will also reduce the burden on members that results from manually reporting certain transactions to NASD. In addition, the mandatory reporting of odd-lots and other transactions will enhance the regulatory audit trail while not providing distortive information to the publicly disseminated tape.

To fully automate NASD's procedures for assessing the regulatory transaction fee, NASD is proposing to amend: (1) Section 3 to create an affirmative obligation to report all covered sales that must be reported to NASD for purposes of Section 3 in an automated manner; (2) Rules 6130 and 6130A to require that members report all transactions reportable to NASD and subject to the regulatory transaction fee pursuant to Section 3 to NMC or TRACS and to identify certain transactions submitted specifically for a regulatory transaction fee assessment with a special indicator denoting their purpose; and (3) Rules 4632, 4642, 4632A, 6420, and 6620 governing trade reporting that currently prohibit member firms from reporting odd-lot transactions, away from the market sales, and OTC options, as well as other identified transactions, to clarify that the

prohibition found in the transaction reporting rules is limited to the submission of a transaction for publication purposes.⁴

NASD will announce the effective date of the proposed rule change in a Notice to Members to be published no later than 60 days following Commission approval. The effective date will be at least 90 days following publication of the Notice to Members announcing Commission approval to allow firms sufficient time to make any necessary systems changes.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁵ 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 requiring members to report all transactions that must be reported to NASD and are subject to the regulatory transaction fee in an automated manner would ensure more accurate and timely reporting of such transactions and would reduce the burden on members that results from manually reporting certain transactions.

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.

⁴ The proposed amendments to Rules 4632A and 6420 solely amend the headings of Rules 4632A(k) and 6420(e). The text of these rules does not need to be amended because it already states that the prohibition from reporting the identified transactions is limited to the submission of a transaction for publication purposes (or in the case of listed securities, for inclusion on the Consolidated Tape).

⁵ 15 U.S.C. 78o-3(b)(6).

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

Written comments were neither solicited nor received.

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-2006-055 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary,
Securities and Exchange Commission, 100 F Street, NE, Washington, DC
20549-1090.

All submissions should refer to File Number SR-NASD-2006-055. 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. 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 File Number SR-NASD-2006-055 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.⁶

Nancy M. Morris
Secretary

⁶ 17 CFR 200.30-3(a)(12).