

OMB APPROVAL

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

File No. SR - 2007 - 002

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		
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).

Proposed Rule Change to Make Conforming Changes to the NASD/Nasdaq Trade Reporting Facility Rules Consistent with the New Requirements of Regulation NMS

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
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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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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 Sent As Paper Document

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Exhibit 3 - Form, Report, or Questionnaire

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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 Sent As Paper Document

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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”),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 make conforming changes to the transaction reporting rules relating to the NASD/Nasdaq Trade Reporting Facility (the “NASD/Nasdaq TRF”) consistent with the new requirements of Regulation NMS under the Act.²

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

* * * * *

4632. Transaction Reporting

(a) When and How Transactions are Reported

(1) Trade Reporting Facility Participants shall, within 90 seconds after execution, transmit to the NASD/Nasdaq Trade Reporting Facility or if the NASD/Nasdaq Trade Reporting Facility is unavailable due to system or

¹ 15 U.S.C. 78s(b)(1).

² See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

The Commission has approved proposed rule changes to establish Trade Reporting Facilities in conjunction with the National Stock Exchange and the Boston Stock Exchange. See Securities Exchange Act Release No. 54715 (November 6, 2006), 71 FR 66354 (November 14, 2006) (order approving SR-NASD-2006-108); and Securities Exchange Act Release No. 54931 (December 13, 2006), 71 FR 76409 (December 20, 2006) (order approving SR-NASD-2006-115). NASD intends to file a separate proposed rule change to align the transaction reporting rules for the NASD/NSX TRF and the NASD/BSE TRF, and any additional Trade Reporting Facilities approved by the Commission, with Regulation NMS.

transmission failure, by telephone to the Operations Department, last sale reports of transactions in designated securities executed during normal market hours. Transactions not reported within 90 seconds after execution shall be designated as late.

(2) Transaction Reporting to the NASD/Nasdaq Trade Reporting Facility
Outside Normal Market Hours

(A) Last sale reports of transactions in designated securities executed between 8:00 a.m. and 9:30 a.m. Eastern Time shall be reported within 90 seconds after execution and shall be designated [as “.T” trades] with the unique trade report modifier, as specified by NASD, to denote their execution outside normal market hours. [Transactions not reported within 90 seconds also shall be designated as .T trades.] Such [T]transactions not reported before 9:30 a.m. shall be reported after 4:00 p.m. and before 8:00 p.m. [as .T trades] with the appropriate trade report modifier as specified by NASD.

(B) Last sale reports of transactions in designated securities executed between the hours of 4:00 p.m. and 8:00 p.m. Eastern Time shall be reported within 90 seconds after execution and be designated [as “.T” trades] with the unique trade report modifier, as specified by NASD, to denote their execution outside normal market hours. [Transactions not reported within 90 seconds also shall be designated as .T trades.] Such [T]transactions not reported before 8:00 p.m. shall be reported on an “as/of” basis the following day between 8:00 a.m. and 8:00 p.m.

(C) Last sale reports of transactions executed between midnight and 8:00 a.m. Eastern Time shall be reported between 8:00 a.m. and 9:30 a.m. Eastern Time on trade date [as “.T” trades] with the unique trade report modifier, as specified by NASD, to denote their execution outside normal market hours. Such [T] transactions not reported before 9:30 a.m. shall be reported after 4:00 p.m. and before 8:00 p.m. [as .T trades] with the appropriate trade report modifier as specified by NASD.

(D) Last sale reports of transactions executed between 8:00 p.m. and midnight Eastern Time shall be reported on the next business day (T+1) between 8:00 a.m. and 8:00 p.m. Eastern Time and be designated “as/of” trades.

[(3) All members shall report as soon as practicable to the Market Regulation Department on Form T, last sale reports of transactions in designated securities for which electronic submission to the Trade Reporting Facility is not possible (e.g., the ticker symbol for the security is no longer available or a market participant identifier is no longer active). Transactions that can be reported to the Trade Reporting Facility, whether on trade date or on a subsequent date on an “as of” basis (T+N), shall not be reported on Form T.]

[(4) All members shall append the “.W” trade report modifier to transaction reports occurring at prices based on average-weighting, or other special pricing formulae.]

[(5) All trade tickets for transactions in designated securities shall be time-stamped at the time of execution.]

(3) Members shall time-stamp all trade tickets at the time of execution for transactions in designated securities. Execution time shall be reported to NASD on all last sale reports and shall be expressed in hours, minutes and seconds based on Eastern Time in military format, unless another provision of NASD rules requires that a different time be included on the report.

[(6)] (4) Transactions not reported within 90 seconds after execution shall be designated as late. A pattern or practice of late reporting without exceptional circumstances may be considered conduct inconsistent with high standards of commercial honor and just and equitable principles of trade in violation of Rule 2110.

[(7) All members shall append the .PRP trade report modifier to transaction reports that reflect a price different from the current market when the execution price is based on a prior reference point in time. The transaction report shall include the prior reference time in lieu of the actual time the trade was executed. The .PRP modifier shall not be appended to a report of a transaction whose price is based on a prior reference point in time if the trade is executed and reported within 90 seconds from the prior reference point in time.]

[(8) The Trade Reporting Facility will append the .T modifier or the .SLD modifier, as appropriate, to those reports submitted to the Trade Reporting Facility that contain the time of execution, but that do not contain the appropriate modifier.]

[(9) Members shall append the .W trade report modifier to reports of Stop Stock Transactions (as such term is defined in Rule 4200) and include the time at

which the member and the other party agreed to the Stop Stock Price in lieu of including the time of execution on the trade report. The .W modifier shall not be appended to a report of a Stop Stock Transaction if the Stop Stock Transaction is executed and reported within 90 seconds of the time the member and the other party agree to the Stop Price.]

[(10) To identify pre-opening and after-hours trades reported late, the Trade Reporting Facility will convert the .T modifier to .ST for any report submitted to the Trade Reporting Facility more than 90 seconds after execution.]

(5) Members also shall append the applicable trade report modifiers as specified by NASD to all last sale reports, including reports of “as/of” trades:

(A) if the trade is executed during normal market hours and it is reported later than 90 seconds after execution;

(B) if the trade is a Seller’s Option Trade, denoting the number of days for delivery;

(C) if the trade is a Cash Trade;

(D) if the trade is a Next Day Trade;

(E) if the trade occurs at a price based on an average weighting or another special pricing formula;

(F) if the trade is a Stop Stock Transaction (as defined in Rule 4200) (Note: the time at which the member and the other party agreed to the Stop Stock Price must be given in lieu of including the time of execution on the trade report and the designated modifier shall not be appended to a report of a Stop Stock Transaction if the Stop Stock

Transaction is executed and reported within 90 seconds of the time the member and the other party agree to the Stop Stock Price);

(G) if the transaction report reflects a price different from the current market when the execution price is based on a prior reference point in time (Note: the transaction report shall include the prior reference time in lieu of the actual time the trade was executed and the designated modifier shall not be appended to a report of a transaction whose price is based on a prior reference point in time if the trade is executed and reported within 90 seconds from the prior reference point in time);

(H) to identify pre-opening and after-hours trades (executed between 8:00 a.m. and 9:30 a.m. Eastern time or between 4:00 p.m. and 8:00 p.m. Eastern time) reported more than 90 seconds after execution;

(I) if the trade would be a trade-through of a protected quotation, but for the trade being qualified for an exception or exemption from Rule 611 of Regulation NMS under the Act (Note: to ensure consistency in the usage of Rule 611 related modifiers by registered broker-dealers, this modifier will be used in conformity with the specifications approved by the Operating Committee of the relevant National Market System Plans to identify trades executed pursuant to an exception or exemption from Rule 611);

(J) if the trade would be a trade-through of a protected quotation, but for the trade being qualified for an exception or exemption from Rule 611 of Regulation NMS under the Act, members must, in addition to the

modifier required in paragraph (I) above, append an appropriate unique modifier, specified by NASD, that identifies the specific applicable exception or exemption from Rule 611 that a member is relying upon (Note: to ensure consistency in the usage of Rule 611 related modifiers by registered broker-dealers, these modifiers will be used in conformity with the specifications approved by the Operating Committee of the relevant National Market System Plans to identify trades executed pursuant to an exception or exemption from Rule 611); and

(K) any other modifier as specified by NASD or the Securities and Exchange Commission.

To the extent that any of the modifiers required by this rule conflict, NASD shall provide guidance regarding the priorities among modifiers and members shall report in accordance with such guidance, as applicable.

(6) The NASD/Nasdaq Trade Reporting Facility will append the appropriate modifier to indicate that a trade was executed outside normal market hours or that a report was submitted late to the NASD/Nasdaq Trade Reporting Facility, where such report contains the time of execution, but does not contain the appropriate modifier.

(7) To identify pre-opening and after-hours trades reported late, the NASD/Nasdaq Trade Reporting Facility will convert the late modifier, as applicable, on any pre-opening or after-hours report submitted to the NASD/Nasdaq Trade Reporting Facility more than 90 seconds after execution.

(8) All members shall report as soon as practicable to the Market Regulation Department on Form T, last sale reports of transactions in designated securities for which electronic submission to the NASD/Nasdaq Trade Reporting Facility is not possible (e.g., the ticker symbol for the security is no longer available or a market participant identifier is no longer active). Transactions that can be reported to the NASD/Nasdaq Trade Reporting Facility, whether on trade date or on a subsequent date on an “as of” basis (T+N), shall not be reported on Form T.

(b) through (e) No Change.

(f) Prohibition on Aggregation of Transaction Reports

Individual executions of orders in a security at the same price may not be aggregated, for purposes of transaction reporting to the NASD/Nasdaq Trade Reporting Facility, into a single transaction report.

[(1) Under the following conditions, individual executions of orders in a security at the same price may be aggregated, for transaction reporting purposes, into a single transaction report. Individual transactions in convertible debt securities cannot be aggregated pursuant to this paragraph.]

[(A) Orders received prior to the opening of the reporting member’s market in the security and simultaneously executed at the opening. Also, orders received during a trading or quotation halt in the security and executed simultaneously when trading or quotations resume. In no event shall a member delay its opening or resumption of quotations for the purpose of aggregating transactions.]

[Example:]

[A firm receives, prior to its market opening, several market orders to sell which total 10,000 shares. All such orders are simultaneously executed at the opening at a reported price of 40.]

[REPORT 10,000 shares at 40.]

[(B) Simultaneous executions by the member of customer transactions at the same price, e.g., a number of limit orders being executed at the same time when a limit price has been reached.]

[Example:]

[A firm has several customer limit orders to sell that total 10,000 shares at a limit price of 40. That price is reached and all such orders are executed simultaneously.]

[REPORT 10,000 shares at 40.]

[(C) Orders relayed to the trading department of the reporting member for simultaneous execution at the same price.]

[Example:]

[A firm purchases a block of 50,000 shares from an institution at a reported price of 40.]

[REPORT 50,000 at 40.]

[Subsequently, one of the firm's branch offices transmits to the firm's trading department for execution customer buy orders in the security totaling 12,500 shares at a reported price of 40.]

[REPORT 12,500 at 40.]

[Subsequently, another branch office transmits to the firm's trading department for execution customer buy orders totaling 15,000 shares in the security at a reported price of 40.]

[REPORT 15,000 at 40.]

[Example:]

[Due to a major change in market conditions, a firm's trading department receives from a branch office for execution customer market orders to sell totaling 10,000 shares. All are executed at a reported price of 40.]

[REPORT 10,000 at 40.]

[(D) Orders received or initiated by the reporting member that are impractical to report individually and are executed at the same price within 60 seconds of execution of the initial transaction; provided however, that no individual order of 10,000 shares or more may be aggregated in a transaction report and that the aggregated transaction report shall be made within 90 seconds of the initial execution reported therein. Furthermore, it is not permissible for a member to withhold reporting a trade in anticipation of aggregating the transaction with other transactions. The limitation on aggregating individual orders of 10,000 shares or more for a particular security shall not apply on the first day of secondary market trading of an IPO for that security.]

[Examples:]

[A reporting member receives and executes the following orders at the following times and desires to aggregate reports to the maximum extent permitted under this Rule.]

[First Example]

[11:01:00 500 shares at 40]

[11:01:05 500 shares at 40]

[11:01:10 9,000 shares at 40]

[11:01:15 500 shares at 40]

[REPORT 10,500 shares at 40 within ninety seconds of 11:01.]

[Second Example]

[11:01:00 100 shares at 40]

[11:01:10 11,000 shares at 40]

[11:01:30 300 shares at 40]

[REPORT 400 shares within ninety seconds of 11:01 and 11,000 shares within ninety seconds of 11:01:10 (individual transactions of 10,000 shares or more must be reported separately).]

[Third Example]

[11:01:00 100 shares at 40]

[11:01:15 500 shares at 40]

[11:01:30 200 shares at 40]

[11:02:30 400 shares at 40]

[REPORT 800 shares at 40 within ninety seconds of 11:01 and 400 shares at 40 within ninety seconds of 11:02:30 (the last trade is not

within sixty seconds of the first and must, therefore, be reported separately).]

[(2) The reporting member shall identify aggregated transaction reports and order tickets of aggregated trades in a manner directed by NASD.]

(g) No Change.

* * * * *

6130. Trade Report Input

(a) through (d) No Change.

(e) Aggregation of Transaction Reports for Clearing Purposes Only

Individual executions of orders in a security at the same price and with the identical contra party may be aggregated[, for System reporting purposes,] into a single report and submitted to the System for purposes of clearing only [if the transactions are with the identical contra party]; provided, however, that a Reporting Party may not withhold reporting a trade in anticipation of aggregating the transaction with other transactions.

(f) through (g) No Change.

* * * * *

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved and authorized for filing with the Commission by the NASD Markets, Services and Information Committee at its meeting on February 1, 2006. The Board of Governors of NASD had an opportunity to review the proposed rule change at its meeting on February 1, 2006. 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 has filed the proposed rule change for immediate effectiveness. In accordance with the Regulation NMS compliance dates established by the Commission,³ NASD proposes to make the proposed rule change operative on the Pilot Stocks Phase Date, which is currently anticipated to be May 21, 2007. However, the NASD/Nasdaq TRF will begin accepting trade reports submitted in compliance with the proposed rule change starting on the Trading Phase Date, which is currently anticipated to be February 5, 2007. This does not, however, change in any way a member's responsibilities under the Regulation NMS compliance dates.⁴

³ See Securities Exchange Act Release No. 53829 (May 18, 2006), 71 FR 30038 (May 24, 2006).

⁴ NASD notes that although the proposed rule change will not be operative until May 21, 2007, members may be required to meet the Regulation NMS message format requirements for reporting to the NASD/Nasdaq TRF prior to that date. Mandatory compliance with Regulation NMS message formatting requirements is currently scheduled for the NASD/Nasdaq TRF on April 2, 2007 and on that date, members would be required to report in accordance with the new systems requirements, although the specific new modifiers proposed herein would continue to be voluntary until May 21, 2007. See Nasdaq Technical Update 2006-034 (December 19, 2006),

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

(a) Purpose

Background

On June 29, 2005, the SEC published its release adopting Regulation NMS,⁵ which established new substantive rules designed to modernize and strengthen the regulatory structure of the U.S. equities markets. Pursuant to Regulation NMS, the Commission, among other things, adopted the Order Protection Rule (SEC Rule 611) to establish protection against trade-throughs for NMS stocks.⁶

In general, the Order Protection Rule requires a trading center (which includes national securities exchanges, SRO trading facilities, alternative trading systems, OTC market makers and block positioners) to establish, maintain and enforce written policies and procedures that are reasonably designed to prevent trade-throughs on that trading center of protected quotations and, if relying on an exception, that are reasonably designed to assure compliance with the terms of the exception.⁷ There currently are nine

<http://www.nasdaqtrader.com/Trader/News/2006/technicalupdates/tu2006-034.stm>.

⁵ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

⁶ NMS stock is defined in Rule 600(b)(47) of Regulation NMS as “any NMS security other than an option.” Rule 600(b)(46) of Regulation NMS defines NMS security as “any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options.”

⁷ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

exceptions and two exemptions to the Order Protection Rule.⁸ In addition, the Order Protection Rule requires trading centers to surveil regularly to ascertain the effectiveness of the policies and procedures adopted pursuant to SEC Rule 611 and take prompt action to remedy deficiencies in such policies and procedures.

On June 30, 2006, the Commission approved SR-NASD-2005-087 which, among other things, proposed rules for reporting trades in Nasdaq-listed securities effected otherwise than on an exchange to the NASD/Nasdaq TRF.⁹ On November 21, 2006, the Commission approved SR-NASD-2006-104 which, among other things, proposed to expand the scope of the NASD/Nasdaq TRF rules to include reporting trades in non-Nasdaq exchange-listed securities effected otherwise than on exchange.¹⁰

Neither NASD, generally, nor any of the NASD Trade Reporting Facilities, specifically, qualifies as a trading center within the meaning of Regulation NMS. Thus, the provisions of the Order Protection Rule requiring trading centers to establish, maintain and enforce written policies and procedures that are reasonably designed to prevent trade-throughs on that trading center of protected quotations in NMS stocks are

⁸ See 17 CFR 242.611; Securities Exchange Act Release No. 54389 (August 31, 2006), 71 FR 52829 (September 7, 2006) (Order Granting an Exemption for Qualified Contingent Trades from Rule 611(a) of Regulation NMS under the Securities Exchange Act of 1934); and Securities Exchange Act Release No. 54678 (October 31, 2006), 71 FR 65018 (November 6, 2006) (Order Exempting Certain Sub-Penny Trade-Throughs from Rule 611 of Regulation NMS under the Securities Exchange Act of 1934).

⁹ See Securities Exchange Act Release No. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006) (order approving SR-NASD-2005-087).

¹⁰ See Securities Exchange Act Release No. 54798 (November 21, 2006), 71 FR 69156 (November 29, 2006) (order approving SR-NASD-2006-104). SR-NASD-2006-104 will be effective on the date that the Nasdaq Exchange operates as a national securities exchange for non-Nasdaq exchange-listed securities.

not applicable to NASD. However, NASD has a responsibility to enforce requirements under the Act that apply to activity within its regulatory authority. Thus, unlike exchanges that have direct Regulation NMS obligations with respect to the SRO trading facilities, NASD has indirect Regulation NMS obligations with respect to all over-the-counter market activity, including post-trade regulation for compliance with the Order Protection Rule with respect to trading centers that trade report through the NASD/Nasdaq TRF (or any NASD Trade Reporting Facility). Such regulation includes monitoring for whether trading centers are reporting trades to the NASD/Nasdaq TRF (or any NASD Trade Reporting Facility) that are trade-throughs of protected quotes and whether such trade-throughs are permissible under one of the specific exceptions under the Order Protection Rule.

Proposed Amendments to Align NASD/Nasdaq TRF Rules with Reg NMS

NASD is proposing to amend the NASD/Nasdaq TRF transaction reporting requirements to require reporting members to append applicable modifiers to last sale transaction reports with respect to trades that fall within the SEC Rule 611 exceptions and exemptions. The proposed amendments are substantially similar to amendments to the Alternative Display Facility (ADF) transaction reporting requirements, which were approved by the Commission on September 28, 2006.¹¹

¹¹ See Securities Exchange Act Release No. 34-54537 (September 28, 2006), 71 FR 59173 (October 6, 2006) (order approving SR-NASD-2006-091).

Unlike the ADF, the NASD/Nasdaq TRF is a trade reporting mechanism only; it does not permit quoting. As such, not all of the amendments to the ADF rules are applicable to the NASD/Nasdaq TRF rules.

Specifically, NASD is proposing new Rule 4632(a)(5)(I) to require members to append a unique modifier, specified by NASD, to indicate whether the trade would be a trade-through of a protected quotation but for the trade being qualified for an exception or exemption from SEC Rule 611. Further, NASD is proposing new Rule 4632(a)(5)(J) to require that for any trade that would be a trade-through of a protected quotation but for the trade being qualified for an exception or exemption from SEC Rule 611, members must append to the transaction report, in addition to the modifier required under new Rule 4632(a)(5)(I), a unique modifier, specified by NASD, that identifies the specific applicable exception or exemption from SEC Rule 611 upon which the member is relying.¹² As stated in the proposed rules, these modifiers will be used in conformity with the specifications approved by the Operating Committee of the relevant National Market System Plans to identify trades executed pursuant to an exception or exemption from SEC Rule 611. NASD provided details of the specific modifiers required under the proposed new rules in updated Trade Reporting Programming Specifications, which were published on October 16, 2006,¹³ and also will publish guidance in a Notice to Members.

Additionally, NASD is proposing to amend Rule 4632 to require members reporting transactions to the NASD/Nasdaq TRF to append “[a]ny other modifier as specified by NASD or the Securities and Exchange Commission.” An identical provision

¹² Members using the trade report modifiers under the proposed new rules are responsible for ensuring that the transaction meets the criteria of the specific exemption or exception set forth in SEC Rule 611.

¹³ See Nasdaq Technical Update No. 2006-29 (October 16, 2006), <http://www.nasdaqtrader.com/Trader/News/2006/technicalupdates/tu2006-029.stm>.

in the ADF rules was subject to notice and comment and approved by the Commission pursuant to SR-NASD-2006-091. Pursuant to this proposed provision, NASD will have the authority to prescribe additional trade report modifiers by updating the Technical Specifications for the NASD/Nasdaq TRF without submitting a further proposed rule change for approval by the Commission. For example, such authority will be used to require additional modifiers to designate trades that qualify under two existing exemptions from the Order Protection Rule (qualified contingent trades and certain sub-penny trade-throughs)¹⁴ as well as any other exemption that the SEC may grant in the future. This authority may also be used to capture additional regulatory information that NASD deems necessary (e.g., NASD will require more specific delineation of the Intermarket Sweep exception than is required by the National Market System specifications).¹⁵ To enable members to make the necessary systems changes, NASD will provide at least 30 days advance written notice relating to any new modifiers.

NASD also is proposing to amend Rule 4632 to expressly provide that in the event that the rules require multiple modifiers on any given trade report, members are to report in accordance with guidance provided by NASD regarding priorities among modifiers. Members that report in accordance with such guidance will not be in violation of the trade reporting rules for failing to use a particular modifier.

¹⁴ See supra note 8.

¹⁵ The National Market System specifications identify both types of ISO orders with a single modifier. NASD, however, intends to distinguish between the ISO exceptions by requiring firms to use a separate modifier, as defined by NASD, in instances where the executing firm is responsible for sweeping the market.

NASD believes that the proposed rule change is necessary to ensure that there is transparency relating to trades that are exempt from the trade-through rule and to enhance NASD's ability to examine for compliance with the Order Protection Rule.

Proposed Amendments to Conform NASD/Nasdaq TRF Rules to ADF Rules

As part of SR-NASD-2006-091, NASD reorganized the ADF reporting rules to enhance their clarity. As part of this proposed rule change, NASD is proposing similar changes to conform the NASD/Nasdaq TRF reporting rules to the ADF reporting rules to the extent practicable. Specifically, NASD is proposing to reorganize the NASD/Nasdaq TRF trade reporting rules and renumber paragraphs (a)(3) and (a)(6) of Rule 4632 without amending the text of those provisions. NASD also is proposing to renumber paragraph (a)(5) of Rule 4632 and amend the text of that provision to conform to the text of the equivalent provision in the ADF reporting rules.

Additionally, NASD is proposing to adopt new Rule 4632(a)(5) to require members to use trade report modifiers designated by NASD for certain enumerated transactions. Consistent with the ADF reporting requirements, proposed new Rule 4632(a)(5) would clarify that members are required to append applicable trade report modifiers to reports of all trades, including "as/of" trades.¹⁶ The proposed amendments to the NASD/Nasdaq TRF rules do not label the modifiers members are required to use when reporting the enumerated transactions. Some of the modifiers that members are required to append to trade reports may differ depending on the system used to connect to

¹⁶ NASD reminds members that they should mark any "as/of" trade report for publication if that trade would have been for publication had it been reported on trade date.

the NASD/Nasdaq TRF. Thus, NASD is proposing amendments in Rule 4632(a) to identify the types of transactions that must have a unique identifier associated with them; the modifiers will be labeled in the system technical specifications rather than in the rules.¹⁷

In addition, consistent with changes to the ADF rules pursuant to SR-NASD-2006-091, NASD is proposing to amend Rule 4632(f) to expressly prohibit members from aggregating individual executions of orders in a security at the same price into a single transaction report. Additionally, NASD is proposing to amend Rule 6130(e) to clarify that members may aggregate individual executions of orders in a security at the same price with the identical contra party and submit a single report to the System for clearing purposes only. NASD has determined that it no longer will allow members to bunch transactions for purposes of reporting to any NASD facility to ensure greater transparency of individual transactions.

As noted in Item 2 of this filing, NASD has filed the proposed rule change for immediate effectiveness. In accordance with the Regulation NMS compliance dates established by the Commission,¹⁸ NASD proposes to make the proposed rule change

¹⁷ Consistent with this proposed rule change, pursuant to SR-NASD-2007-001, NASD has proposed to delete the modifier labels from the ADF trade reporting rules.

Additionally, NASD notes that the proposed rule change does not contemplate a trade report modifier for transactions based upon a single-priced opening, re-opening or closing transaction because this is an exchange function. Pursuant to SR-NASD-2007-001, NASD has proposed to delete Rule 4632A(a)(4)(H) from the ADF rules.

¹⁸ See Securities Exchange Act Release No. 53829 (May 18, 2006), 71 FR 30038 (May 24, 2006).

operative on the Pilot Stocks Phase Date, which is currently anticipated to be May 21, 2007. However, the NASD/Nasdaq TRF will begin accepting trade reports submitted in compliance with the proposed rule change starting on the Trading Phase Date, which is currently anticipated to be February 5, 2007. This does not, however, change in any way a member's responsibilities under the Regulation NMS compliance dates.¹⁹

(b) Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,²⁰ which requires, among other things, that NASD rules 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 facilitates the goals articulated in Regulation NMS, including providing an effective mechanism and regulatory framework for reporting over-the-counter transactions to NASD.

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

¹⁹ NASD notes that although the proposed rule change will not be operative until May 21, 2007, members may be required to meet the Regulation NMS message format requirements for reporting to the NASD/Nasdaq TRF prior to that date. Mandatory compliance with Regulation NMS message formatting requirements is currently scheduled for the NASD/Nasdaq TRF on April 2, 2007 and on that date, members would be required to report in accordance with the new systems requirements, although the specific new modifiers proposed herein would continue to be voluntary until May 21, 2007. See Nasdaq Technical Update 2006-034 (December 19, 2006), <http://www.nasdaqtrader.com/Trader/News/2006/technicalupdates/tu2006-034.stm>.

²⁰ 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**

Not applicable.

7. **Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)**

The proposed rule change is effective upon filing pursuant to Section 19(b)(3) of the Act and paragraph (f)(6) of Rule 19b-4 thereunder,²¹ in that the proposed rule change does not significantly affect the protection of investors or the public interest; does not impose any significant burden on competition; and does not become operative for 30 days after filing. NASD believes that the filing is appropriately designated as “non-controversial” because the proposed rule change is substantially similar to recent amendments to ADF trade reporting requirements, which were subject to notice and comment and approved by the SEC on September 28, 2006.²² In accordance with Rule 19b-4, NASD submitted written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing.

²¹ 17 CFR 240.19b-4(f)(6).

²² See Securities Exchange Act Release No. 34-54537 (September 28, 2006), 71 FR 59173 (October 6, 2006) (order approving SR-NASD-2006-091).

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-2007-002)

Self-Regulatory Organizations: National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Make Conforming Changes to the NASD/Nasdaq Trade Reporting Facility Rules Consistent with the New Requirements of Regulation NMS

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. NASD has designated the proposed rule change as constituting a “non-controversial” rule change under paragraph (f)(6) of Rule 19b-4 under the Act,³ which renders the proposal effective upon receipt of this filing by the Commission. 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 make conforming changes to the transaction reporting rules relating to the NASD/Nasdaq Trade Reporting Facility (the “NASD/Nasdaq TRF”) consistent with the new requirements of Regulation NMS under the Act.⁴

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4.

⁴ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

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

* * * * *

4632. Transaction Reporting

(a) When and How Transactions are Reported

(1) Trade Reporting Facility Participants shall, within 90 seconds after execution, transmit to the NASD/Nasdaq Trade Reporting Facility or if the NASD/Nasdaq Trade Reporting Facility is unavailable due to system or transmission failure, by telephone to the Operations Department, last sale reports of transactions in designated securities executed during normal market hours. Transactions not reported within 90 seconds after execution shall be designated as late.

(2) Transaction Reporting to the NASD/Nasdaq Trade Reporting Facility
Outside Normal Market Hours

(A) Last sale reports of transactions in designated securities executed between 8:00 a.m. and 9:30 a.m. Eastern Time shall be reported within 90 seconds after execution and shall be designated [as “.T” trades] with the unique trade report modifier, as specified by NASD, to denote

The Commission has approved proposed rule changes to establish Trade Reporting Facilities in conjunction with the National Stock Exchange and the Boston Stock Exchange. See Securities Exchange Act Release No. 54715 (November 6, 2006), 71 FR 66354 (November 14, 2006) (order approving SR-NASD-2006-108); and Securities Exchange Act Release No. 54931 (December 13, 2006), 71 FR 76409 (December 20, 2006) (order approving SR-NASD-2006-115). NASD intends to file a separate proposed rule change to align the transaction reporting rules for the NASD/NSX TRF and the NASD/BSE TRF, and any additional Trade Reporting Facilities approved by the Commission, with Regulation NMS.

their execution outside normal market hours. [Transactions not reported within 90 seconds also shall be designated as .T trades.] Such [T]transactions not reported before 9:30 a.m. shall be reported after 4:00 p.m. and before 8:00 p.m. [as .T trades] with the appropriate trade report modifier as specified by NASD.

(B) Last sale reports of transactions in designated securities executed between the hours of 4:00 p.m. and 8:00 p.m. Eastern Time shall be reported within 90 seconds after execution and be designated [as “.T” trades] with the unique trade report modifier, as specified by NASD, to denote their execution outside normal market hours. [Transactions not reported within 90 seconds also shall be designated as .T trades.] Such [T]transactions not reported before 8:00 p.m. shall be reported on an “as/of” basis the following day between 8:00 a.m. and 8:00 p.m.

(C) Last sale reports of transactions executed between midnight and 8:00 a.m. Eastern Time shall be reported between 8:00 a.m. and 9:30 a.m. Eastern Time on trade date [as “.T” trades] with the unique trade report modifier, as specified by NASD, to denote their execution outside normal market hours. Such [T]transactions not reported before 9:30 a.m. shall be reported after 4:00 p.m. and before 8:00 p.m. [as .T trades] with the appropriate trade report modifier as specified by NASD.

(D) Last sale reports of transactions executed between 8:00 p.m. and midnight Eastern Time shall be reported on the next business day (T+1) between 8:00 a.m. and 8:00 p.m. Eastern Time and be designated

“as/of” trades.

[(3) All members shall report as soon as practicable to the Market Regulation Department on Form T, last sale reports of transactions in designated securities for which electronic submission to the Trade Reporting Facility is not possible (e.g., the ticker symbol for the security is no longer available or a market participant identifier is no longer active). Transactions that can be reported to the Trade Reporting Facility, whether on trade date or on a subsequent date on an “as of” basis (T+N), shall not be reported on Form T.]

[(4) All members shall append the “.W” trade report modifier to transaction reports occurring at prices based on average-weighting, or other special pricing formulae.]

[(5) All trade tickets for transactions in designated securities shall be time-stamped at the time of execution.]

(3) Members shall time-stamp all trade tickets at the time of execution for transactions in designated securities. Execution time shall be reported to NASD on all last sale reports and shall be expressed in hours, minutes and seconds based on Eastern Time in military format, unless another provision of NASD rules requires that a different time be included on the report.

[(6)] (4) Transactions not reported within 90 seconds after execution shall be designated as late. A pattern or practice of late reporting without exceptional circumstances may be considered conduct inconsistent with high standards of commercial honor and just and equitable principles of trade in violation of Rule 2110.

[(7) All members shall append the .PRP trade report modifier to transaction reports that reflect a price different from the current market when the execution price is based on a prior reference point in time. The transaction report shall include the prior reference time in lieu of the actual time the trade was executed. The .PRP modifier shall not be appended to a report of a transaction whose price is based on a prior reference point in time if the trade is executed and reported within 90 seconds from the prior reference point in time.]

[(8) The Trade Reporting Facility will append the .T modifier or the .SLD modifier, as appropriate, to those reports submitted to the Trade Reporting Facility that contain the time of execution, but that do not contain the appropriate modifier.]

[(9) Members shall append the .W trade report modifier to reports of Stop Stock Transactions (as such term is defined in Rule 4200) and include the time at which the member and the other party agreed to the Stop Stock Price in lieu of including the time of execution on the trade report. The .W modifier shall not be appended to a report of a Stop Stock Transaction if the Stop Stock Transaction is executed and reported within 90 seconds of the time the member and the other party agree to the Stop Price.]

[(10) To identify pre-opening and after-hours trades reported late, the Trade Reporting Facility will convert the .T modifier to .ST for any report submitted to the Trade Reporting Facility more than 90 seconds after execution.]

(5) Members also shall append the applicable trade report modifiers as specified by NASD to all last sale reports, including reports of “as/of” trades:

(A) if the trade is executed during normal market hours and it is reported later than 90 seconds after execution;

(B) if the trade is a Seller's Option Trade, denoting the number of days for delivery;

(C) if the trade is a Cash Trade;

(D) if the trade is a Next Day Trade;

(E) if the trade occurs at a price based on an average weighting or another special pricing formula;

(F) if the trade is a Stop Stock Transaction (as defined in Rule 4200) (Note: the time at which the member and the other party agreed to the Stop Stock Price must be given in lieu of including the time of execution on the trade report and the designated modifier shall not be appended to a report of a Stop Stock Transaction if the Stop Stock Transaction is executed and reported within 90 seconds of the time the member and the other party agree to the Stop Stock Price);

(G) if the transaction report reflects a price different from the current market when the execution price is based on a prior reference point in time (Note: the transaction report shall include the prior reference time in lieu of the actual time the trade was executed and the designated modifier shall not be appended to a report of a transaction whose price is based on a prior reference point in time if the trade is executed and reported within 90 seconds from the prior reference point in time);

(H) to identify pre-opening and after-hours trades (executed

between 8:00 a.m. and 9:30 a.m. Eastern time or between 4:00 p.m. and 8:00 p.m. Eastern time) reported more than 90 seconds after execution;

(I) if the trade would be a trade-through of a protected quotation, but for the trade being qualified for an exception or exemption from Rule 611 of Regulation NMS under the Act (Note: to ensure consistency in the usage of Rule 611 related modifiers by registered broker-dealers, this modifier will be used in conformity with the specifications approved by the Operating Committee of the relevant National Market System Plans to identify trades executed pursuant to an exception or exemption from Rule 611);

(J) if the trade would be a trade-through of a protected quotation, but for the trade being qualified for an exception or exemption from Rule 611 of Regulation NMS under the Act, members must, in addition to the modifier required in paragraph (I) above, append an appropriate unique modifier, specified by NASD, that identifies the specific applicable exception or exemption from Rule 611 that a member is relying upon (Note: to ensure consistency in the usage of Rule 611 related modifiers by registered broker-dealers, these modifiers will be used in conformity with the specifications approved by the Operating Committee of the relevant National Market System Plans to identify trades executed pursuant to an exception or exemption from Rule 611); and

(K) any other modifier as specified by NASD or the Securities and Exchange Commission.

To the extent that any of the modifiers required by this rule conflict, NASD shall provide guidance regarding the priorities among modifiers and members shall report in accordance with such guidance, as applicable.

(6) The NASD/Nasdaq Trade Reporting Facility will append the appropriate modifier to indicate that a trade was executed outside normal market hours or that a report was submitted late to the NASD/Nasdaq Trade Reporting Facility, where such report contains the time of execution, but does not contain the appropriate modifier.

(7) To identify pre-opening and after-hours trades reported late, the NASD/Nasdaq Trade Reporting Facility will convert the late modifier, as applicable, on any pre-opening or after-hours report submitted to the NASD/Nasdaq Trade Reporting Facility more than 90 seconds after execution.

(8) All members shall report as soon as practicable to the Market Regulation Department on Form T, last sale reports of transactions in designated securities for which electronic submission to the NASD/Nasdaq Trade Reporting Facility is not possible (e.g., the ticker symbol for the security is no longer available or a market participant identifier is no longer active). Transactions that can be reported to the NASD/Nasdaq Trade Reporting Facility, whether on trade date or on a subsequent date on an “as of” basis (T+N), shall not be reported on Form T.

(b) through (e) No Change.

(f) Prohibition on Aggregation of Transaction Reports

Individual executions of orders in a security at the same price may not be

aggregated, for purposes of transaction reporting to the NASD/Nasdaq Trade Reporting Facility, into a single transaction report.

[(1) Under the following conditions, individual executions of orders in a security at the same price may be aggregated, for transaction reporting purposes, into a single transaction report. Individual transactions in convertible debt securities cannot be aggregated pursuant to this paragraph.]

[(A) Orders received prior to the opening of the reporting member's market in the security and simultaneously executed at the opening. Also, orders received during a trading or quotation halt in the security and executed simultaneously when trading or quotations resume. In no event shall a member delay its opening or resumption of quotations for the purpose of aggregating transactions.]

[Example:]

[A firm receives, prior to its market opening, several market orders to sell which total 10,000 shares. All such orders are simultaneously executed at the opening at a reported price of 40.]
[REPORT 10,000 shares at 40.]

[(B) Simultaneous executions by the member of customer transactions at the same price, e.g., a number of limit orders being executed at the same time when a limit price has been reached.]

[Example:]

[A firm has several customer limit orders to sell that total 10,000 shares at a limit price of 40. That price is reached and all such

orders are executed simultaneously.]

[REPORT 10,000 shares at 40.]

[(C) Orders relayed to the trading department of the reporting member for simultaneous execution at the same price.]

[Example:]

[A firm purchases a block of 50,000 shares from an institution at a reported price of 40.]

[REPORT 50,000 at 40.]

[Subsequently, one of the firm's branch offices transmits to the firm's trading department for execution customer buy orders in the security totaling 12,500 shares at a reported price of 40.]

[REPORT 12,500 at 40.]

[Subsequently, another branch office transmits to the firm's trading department for execution customer buy orders totaling 15,000 shares in the security at a reported price of 40.]

[REPORT 15,000 at 40.]

[Example:]

[Due to a major change in market conditions, a firm's trading department receives from a branch office for execution customer market orders to sell totaling 10,000 shares. All are executed at a reported price of 40.]

[REPORT 10,000 at 40.]

[(D) Orders received or initiated by the reporting member that are

impractical to report individually and are executed at the same price within 60 seconds of execution of the initial transaction; provided however, that no individual order of 10,000 shares or more may be aggregated in a transaction report and that the aggregated transaction report shall be made within 90 seconds of the initial execution reported therein. Furthermore, it is not permissible for a member to withhold reporting a trade in anticipation of aggregating the transaction with other transactions. The limitation on aggregating individual orders of 10,000 shares or more for a particular security shall not apply on the first day of secondary market trading of an IPO for that security.]

[Examples:]

[A reporting member receives and executes the following orders at the following times and desires to aggregate reports to the maximum extent permitted under this Rule.]

[First Example]

[11:01:00 500 shares at 40]

[11:01:05 500 shares at 40]

[11:01:10 9,000 shares at 40]

[11:01:15 500 shares at 40]

[REPORT 10,500 shares at 40 within ninety seconds of 11:01.]

[Second Example]

[11:01:00 100 shares at 40]

[11:01:10 11,000 shares at 40]

[11:01:30 300 shares at 40]

[REPORT 400 shares within ninety seconds of 11:01 and 11,000 shares within ninety seconds of 11:01:10 (individual transactions of 10,000 shares or more must be reported separately).]

[Third Example]

[11:01:00 100 shares at 40]

[11:01:15 500 shares at 40]

[11:01:30 200 shares at 40]

[11:02:30 400 shares at 40]

[REPORT 800 shares at 40 within ninety seconds of 11:01 and 400 shares at 40 within ninety seconds of 11:02:30 (the last trade is not within sixty seconds of the first and must, therefore, be reported separately).]

[(2) The reporting member shall identify aggregated transaction reports and order tickets of aggregated trades in a manner directed by NASD.]

(g) No Change.

* * * * *

6130. Trade Report Input

(a) through (d) No Change.

(e) Aggregation of Transaction Reports for Clearing Purposes Only

Individual executions of orders in a security at the same price may and with the identical contra party be aggregated[, for System reporting purposes,] into a single report and submitted to the System for purposes of clearing only [if the transactions are with the

identical contra party]; provided, however, that a Reporting Party may not withhold reporting a trade in anticipation of aggregating the transaction with other transactions.

(f) through (g) 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

Background

On June 29, 2005, the SEC published its release adopting Regulation NMS,⁵ which established new substantive rules designed to modernize and strengthen the regulatory structure of the U.S. equities markets. Pursuant to Regulation NMS, the Commission, among other things, adopted the Order Protection Rule (SEC Rule 611) to establish protection against trade-throughs for NMS stocks.⁶

⁵ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

⁶ NMS stock is defined in Rule 600(b)(47) of Regulation NMS as “any NMS security other than an option.” Rule 600(b)(46) of Regulation NMS defines NMS security as “any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction

In general, the Order Protection Rule requires a trading center (which includes national securities exchanges, SRO trading facilities, alternative trading systems, OTC market makers and block positioners) to establish, maintain and enforce written policies and procedures that are reasonably designed to prevent trade-throughs on that trading center of protected quotations and, if relying on an exception, that are reasonably designed to assure compliance with the terms of the exception.⁷ There currently are nine exceptions and two exemptions to the Order Protection Rule.⁸ In addition, the Order Protection Rule requires trading centers to surveil regularly to ascertain the effectiveness of the policies and procedures adopted pursuant to SEC Rule 611 and take prompt action to remedy deficiencies in such policies and procedures.

On June 30, 2006, the Commission approved SR-NASD-2005-087 which, among other things, proposed rules for reporting trades in Nasdaq-listed securities effected otherwise than on an exchange to the NASD/Nasdaq TRF.⁹ On November 21, 2006, the Commission approved SR-NASD-2006-104 which, among other things, proposed to expand the scope of the NASD/Nasdaq TRF rules to include reporting trades in non-

reporting plan, or an effective national market system plan for reporting transactions in listed options.”

⁷ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

⁸ See 17 CFR 242.611; Securities Exchange Act Release No. 54389 (August 31, 2006), 71 FR 52829 (September 7, 2006) (Order Granting an Exemption for Qualified Contingent Trades from Rule 611(a) of Regulation NMS under the Securities Exchange Act of 1934); and Securities Exchange Act Release No. 54678 (October 31, 2006), 71 FR 65018 (November 6, 2006) (Order Exempting Certain Sub-Penny Trade-Throughs from Rule 611 of Regulation NMS under the Securities Exchange Act of 1934).

⁹ See Securities Exchange Act Release No. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006) (order approving SR-NASD-2005-087).

Nasdaq exchange-listed securities effected otherwise than on exchange.¹⁰

Neither NASD, generally, nor any of the NASD Trade Reporting Facilities, specifically, qualifies as a trading center within the meaning of Regulation NMS. Thus, the provisions of the Order Protection Rule requiring trading centers to establish, maintain and enforce written policies and procedures that are reasonably designed to prevent trade-throughs on that trading center of protected quotations in NMS stocks are not applicable to NASD. However, NASD has a responsibility to enforce requirements under the Act that apply to activity within its regulatory authority. Thus, unlike exchanges that have direct Regulation NMS obligations with respect to the SRO trading facilities, NASD has indirect Regulation NMS obligations with respect to all over-the-counter market activity, including post-trade regulation for compliance with the Order Protection Rule with respect to trading centers that trade report through the NASD/Nasdaq TRF (or any NASD Trade Reporting Facility). Such regulation includes monitoring for whether trading centers are reporting trades to the NASD/Nasdaq TRF (or any NASD Trade Reporting Facility) that are trade-throughs of protected quotes and whether such trade-throughs are permissible under one of the specific exceptions under the Order Protection Rule.

Proposed Amendments to Align NASD/Nasdaq TRF Rules with Reg NMS

NASD is proposing to amend the NASD/Nasdaq TRF transaction reporting requirements to require reporting members to append applicable modifiers to last sale transaction reports with respect to trades that fall within the SEC Rule 611 exceptions and

¹⁰ See Securities Exchange Act Release No. 54798 (November 21, 2006), 71 FR 69156 (November 29, 2006) (order approving SR-NASD-2006-104). SR-NASD-2006-104 will be effective on the date that the Nasdaq Exchange operates as a national securities exchange for non-Nasdaq exchange-listed securities.

exemptions. The proposed amendments are substantially similar to amendments to the Alternative Display Facility (ADF) transaction reporting requirements, which were approved by the Commission on September 28, 2006.¹¹

Specifically, NASD is proposing new Rule 4632(a)(5)(I) to require members to append a unique modifier, specified by NASD, to indicate whether the trade would be a trade-through of a protected quotation but for the trade being qualified for an exception or exemption from SEC Rule 611. Further, NASD is proposing new Rule 4632(a)(5)(J) to require that for any trade that would be a trade-through of a protected quotation but for the trade being qualified for an exception or exemption from SEC Rule 611, members must append to the transaction report, in addition to the modifier required under new Rule 4632(a)(5)(I), a unique modifier, specified by NASD, that identifies the specific applicable exception or exemption from SEC Rule 611 upon which the member is relying.¹² As stated in the proposed rules, these modifiers will be used in conformity with the specifications approved by the Operating Committee of the relevant National Market System Plans to identify trades executed pursuant to an exception or exemption from SEC Rule 611. NASD provided details of the specific modifiers required under the proposed new rules in updated Trade Reporting Programming Specifications, which were

¹¹ See Securities Exchange Act Release No. 34-54537 (September 28, 2006), 71 FR 59173 (October 6, 2006) (order approving SR-NASD-2006-091).

Unlike the ADF, the NASD/Nasdaq TRF is a trade reporting mechanism only; it does not permit quoting. As such, not all of the amendments to the ADF rules are applicable to the NASD/Nasdaq TRF rules.

¹² Members using the trade report modifiers under the proposed new rules are responsible for ensuring that the transaction meets the criteria of the specific exemption or exception set forth in SEC Rule 611.

published on October 16, 2006,¹³ and also will publish guidance in a Notice to Members.

Additionally, NASD is proposing to amend Rule 4632 to require members reporting transactions to the NASD/Nasdaq TRF to append “[a]ny other modifier as specified by NASD or the Securities and Exchange Commission.” An identical provision in the ADF rules was subject to notice and comment and approved by the Commission pursuant to SR-NASD-2006-091. Pursuant to this proposed provision, NASD will have the authority to prescribe additional trade report modifiers by updating the Technical Specifications for the NASD/Nasdaq TRF without submitting a further proposed rule change for approval by the Commission. For example, such authority will be used to require additional modifiers to designate trades that qualify under two existing exemptions from the Order Protection Rule (qualified contingent trades and certain sub-penny trade-throughs)¹⁴ as well as any other exemption that the SEC may grant in the future. This authority may also be used to capture additional regulatory information that NASD deems necessary (e.g., NASD will require more specific delineation of the Intermarket Sweep exception than is required by the National Market System specifications).¹⁵ To enable members to make the necessary systems changes, NASD will provide at least 30 days advance written notice relating to any new modifiers.

NASD also is proposing to amend Rule 4632 to expressly provide that in the

¹³ See Nasdaq Technical Update No. 2006-29 (October 16, 2006), <http://www.nasdaqtrader.com/Trader/News/2006/technicalupdates/tu2006-029.stm>.

¹⁴ See supra note 8.

¹⁵ The National Market System specifications identify both types of ISO orders with a single modifier. NASD, however, intends to distinguish between the ISO exceptions by requiring firms to use a separate modifier, as defined by NASD, in instances where the executing firm is responsible for sweeping the market.

event that the rules require multiple modifiers on any given trade report, members are to report in accordance with guidance provided by NASD regarding priorities among modifiers. Members that report in accordance with such guidance will not be in violation of the trade reporting rules for failing to use a particular modifier.

NASD believes that the proposed rule change is necessary to ensure that there is transparency relating to trades that are exempt from the trade-through rule and to enhance NASD's ability to examine for compliance with the Order Protection Rule.

Proposed Amendments to Conform NASD/Nasdaq TRF Rules to ADF Rules

As part of SR-NASD-2006-091, NASD reorganized the ADF reporting rules to enhance their clarity. As part of this proposed rule change, NASD is proposing similar changes to conform the NASD/Nasdaq TRF reporting rules to the ADF reporting rules to the extent practicable. Specifically, NASD is proposing to reorganize the NASD/Nasdaq TRF trade reporting rules and renumber paragraphs (a)(3) and (a)(6) of Rule 4632 without amending the text of those provisions. NASD also is proposing to renumber paragraph (a)(5) of Rule 4632 and amend the text of that provision to conform to the text of the equivalent provision in the ADF reporting rules.

Additionally, NASD is proposing to adopt new Rule 4632(a)(5) to require members to use trade report modifiers designated by NASD for certain enumerated transactions. Consistent with the ADF reporting requirements, proposed new Rule 4632(a)(5) would clarify that members are required to append applicable trade report modifiers to reports of all trades, including "as/of" trades.¹⁶ The proposed amendments

¹⁶ NASD reminds members that they should mark any "as/of" trade report for publication if that trade would have been for publication had it been reported on trade date.

to the NASD/Nasdaq TRF rules do not label the modifiers members are required to use when reporting the enumerated transactions. Some of the modifiers that members are required to append to trade reports may differ depending on the system used to connect to the NASD/Nasdaq TRF. Thus, NASD is proposing amendments in Rule 4632(a) to identify the types of transactions that must have a unique identifier associated with them; the modifiers will be labeled in the system technical specifications rather than in the rules.¹⁷

In addition, consistent with changes to the ADF rules pursuant to SR-NASD-2006-091, NASD is proposing to amend Rule 4632(f) to expressly prohibit members from aggregating individual executions of orders in a security at the same price into a single transaction report. Additionally, NASD is proposing to amend Rule 6130(e) to clarify that members may aggregate individual executions of orders in a security at the same price with the identical contra party and submit a single report to the System for clearing purposes only. NASD has determined that it no longer will allow members to bunch transactions for purposes of reporting to any NASD facility to ensure greater transparency of individual transactions.

NASD has filed the proposed rule change for immediate effectiveness. In

¹⁷ Consistent with this proposed rule change, pursuant to SR-NASD-2007-001, NASD has proposed to delete the modifier labels from the ADF trade reporting rules.

Additionally, NASD notes that the proposed rule change does not contemplate a trade report modifier for transactions based upon a single-priced opening, re-opening or closing transaction because this is an exchange function. Pursuant to SR-NASD-2007-001, NASD has proposed to delete Rule 4632A(a)(4)(H) from the ADF rules.

accordance with the Regulation NMS compliance dates established by the Commission,¹⁸ NASD proposes to make the proposed rule change operative on the Pilot Stocks Phase Date, which is currently anticipated to be May 21, 2007. However, the NASD/Nasdaq TRF will begin accepting trade reports submitted in compliance with the proposed rule change starting on the Trading Phase Date, which is currently anticipated to be February 5, 2007. This does not, however, change in any way a member's responsibilities under the Regulation NMS compliance dates.¹⁹

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,²⁰ which requires, among other things, that NASD rules 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 facilitates the goals articulated in Regulation NMS, including providing an effective mechanism and regulatory framework for reporting over-the-counter transactions to NASD.

¹⁸ See Securities Exchange Act Release No. 53829 (May 18, 2006), 71 FR 30038 (May 24, 2006).

¹⁹ NASD notes that although the proposed rule change will not be operative until May 21, 2007, members may be required to meet the Regulation NMS message format requirements for reporting to the NASD/Nasdaq TRF prior to that date. Mandatory compliance with Regulation NMS message formatting requirements is currently scheduled for the NASD/Nasdaq TRF on April 2, 2007 and on that date, members would be required to report in accordance with the new systems requirements, although the specific new modifiers proposed herein would continue to be voluntary until May 21, 2007. See Nasdaq Technical Update 2006-034 (December 19, 2006), <http://www.nasdaqtrader.com/Trader/News/2006/technicalupdates/tu2006-034.stm>.

²⁰ 15 U.S.C. 78o-3(b)(6).

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.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.²¹ NASD believes that the filing is appropriately designated as “non-controversial” because the proposed rule change is substantially similar to recent amendments to ADF trade reporting requirements, which were subject to notice and comment and approved by the SEC on September 28, 2006.²² In accordance with Rule 19b-4, NASD submitted written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission

²¹ 17 CFR 240.19b-4(f)(6).

²² See Securities Exchange Act Release No. 34-54537 (September 28, 2006), 71 FR 59173 (October 6, 2006) (order approving SR-NASD-2006-091).

that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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-2007-002 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-2007-002. 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-2007-002 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.²³

Nancy M. Morris

Secretary

²³ 17 CFR 200.30-3(a)(12).