

OMB APPROVAL

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

File No. SR - 2007 - 014

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)		

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 Rules Relating to the NASD/NSX TRF, NASD/BSE TRF and NASD/NYSE TRF 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
this form. A digital signature is as legally binding as a physical
signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

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

Form 19b-4 Information

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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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

Add

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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 proposing (1) amendments to the transaction reporting rules relating to the NASD/NSX Trade Reporting Facility (the “NASD/NSX TRF”), the NASD/BSE Trade Reporting Facility (the “NASD/BSE TRF”) and the NASD/NYSE Trade Reporting Facility (the “NASD/NYSE TRF”) (collectively referred to herein as the “Subject TRFs”) consistent with the new requirements of Regulation NMS under the Act,² and (2) technical amendments to conform, to the extent practicable, the reporting rules of the Subject TRFs to the reporting rules of the NASD/Nasdaq Trade Reporting Facility (the “NASD/Nasdaq TRF”) and NASD’s Alternative Display Facility (the “ADF”).

The text of the proposed rule change is attached as Exhibit 5 to this rule filing.³

(b) Not applicable.

(c) Not applicable.

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).

³ Prior to the implementation of amendments proposed herein on the Pilot Stocks Phase Date, NASD expects to file proposed rule changes that will amend the existing rule text set forth in Exhibit 5. NASD is clarifying that all changes in subsequent filings, unless explicitly stated otherwise in such subsequent filings, will be incorporated into the changes proposed herein (i.e., implementation of the changes proposed herein on the Pilot Stocks Phase Date should not negate any intervening rule changes).

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,⁴ NASD proposes to make the proposed rule change operative on the Pilot Stocks Phase Date, which is currently anticipated to be July 9, 2007. However, members may begin submitting trade reports to the Subject TRFs in compliance with the proposed rule change after the Trading Phase Date, which is currently anticipated to be March 5, 2007. This does not change in any way a member's responsibilities under the Regulation NMS compliance dates.⁵

⁴ See Securities Exchange Act Release No. 55160 (January 24, 2007), 72 FR 4202 (January 30, 2007).

⁵ NASD notes that although the proposed rule change will not be operative until the Pilot Stocks Phase Date, members may be required to meet the Regulation NMS message format requirements for reporting to the Subject TRFs prior to that date. NASD will notify members of the date of mandatory compliance with Regulation NMS message formatting requirements for the Subject TRFs and on such date, members will be required to report in accordance with the new systems requirements, although the specific new modifiers proposed herein would continue to be voluntary until the Pilot Stocks Phase Date.

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,⁶ 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.⁷

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.⁸ There currently are nine exceptions and two exemptions to the Order Protection Rule.⁹ In addition, the Order

⁶ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

⁷ 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.”

⁸ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

⁹ 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

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 November 6, 2006, the Commission approved the establishment of the NASD/NSX TRF.¹⁰ On December 13, 2006, the Commission approved the establishment of the NASD/BSE TRF.¹¹ On February 1, 2007, NASD filed for immediate effectiveness a proposed rule change relating to the establishment of the NASD/NYSE TRF.¹² The Subject TRFs provide members additional mechanisms for reporting locked-in trades in exchange-listed securities executed otherwise than on an exchange.

Neither NASD, generally, nor any of the NASD Trade Reporting Facilities,

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).

¹⁰ See Securities Exchange Act Release No. 54715 (November 6, 2006), 71 FR 66354 (November 14, 2006) (order approving SR-NASD-2006-108). The NASD/NSX TRF commenced operation for the reporting of over-the-counter trades in Nasdaq-listed securities on November 27, 2006 and is expected to expand to the reporting of over-the-counter trades in all exchange-listed securities in the first quarter of 2007.

¹¹ See Securities Exchange Act Release No. 54931 (December 13, 2006), 71 FR 76409 (December 20, 2006) (order approving SR-NASD-2006-115). The NASD/BSE TRF will commence operation upon successful completion of system testing and certification (currently anticipated to be in the first quarter of 2007).

¹² See SR-NASD-2007-011, available at http://www.nasd.com/RulesRegulation/RuleFilings/2007RuleFilings/NASDW_018450. The NASD/NYSE TRF will commence operation upon successful completion of system testing and certification (currently anticipated to be in the first quarter of 2007).

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 an NASD Trade Reporting Facility. Such regulation includes monitoring for whether trading centers are reporting trades to an NASD Trade Reporting Facility that are trade-throughs of protected quotes and whether such trade-throughs are permissible under one of the specific exceptions and exemptions under the Order Protection Rule.

Proposed Amendments to Align the Rules of the Subject TRFs with Regulation NMS

NASD is proposing to amend Rule 4632C relating to the NASD/NSX TRF, Rule 4632D relating to the NASD/BSE TRF and Rule 4632E relating to the NASD/NYSE TRF 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 transaction reporting requirements relating to the ADF, which were approved by the

Commission on September 28, 2006,¹³ and the NASD/Nasdaq TRF, which were filed for immediate effectiveness on January 8, 2007.¹⁴

Specifically, NASD is proposing to adopt new paragraph (a)(5)(C) of Rule 4632C, paragraph (a)(5)(F) of Rule 4632D and paragraph (a)(5)(I) of Rule 4632E 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 to adopt new paragraph (a)(5)(D) of Rule 4632C, paragraph (a)(5)(G) of Rule 4632D and paragraph (a)(5)(J) of Rule 4632E 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 4632C(a)(5)(C), Rule 4632D(a)(5)(F) and Rule 4632E(a)(5)(I), respectively, a unique modifier, specified by NASD, that identifies the specific applicable exception or exemption from SEC Rule 611 upon which

¹³ See Securities Exchange Act Release No. 54537 (September 28, 2006), 71 FR 59173 (October 6, 2006) (order approving SR-NASD-2006-091). See also Securities Exchange Act Release No. 55088 (January 11, 2007), 72 FR 2573 (January 19, 2007) (notice of filing and immediate effectiveness of SR-NASD-2007-001).

Unlike the ADF, an NASD Trade Reporting Facility (e.g., the NASD/NSX 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 rules relating to the NASD Trade Reporting Facilities.

¹⁴ See Securities Exchange Act Release No. 55101 (January 12, 2007), 72 FR 2568 (January 19, 2007) (notice of filing and immediate effectiveness of SR-NASD-2007-002).

the member is relying.¹⁵ 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, along with the respective Subject TRFs, will publish technical specifications regarding the specific modifiers required under the proposed new rules.

Additionally, NASD is proposing to adopt new paragraph (a)(5)(E) of Rule 4632C, paragraph (a)(5)(H) of Rule 4632D and paragraph (a)(5)(K) of Rule 4632E to require members 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 and also was incorporated in Rule 4632 relating to the NASD/Nasdaq TRF pursuant to SR-NASD-2007-002. Under this proposed provision, NASD will have the authority to prescribe additional trade report modifiers by updating the Technical Specifications for the Subject TRFs 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)¹⁶ 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

¹⁵ 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.

¹⁶ See supra note 9.

require more specific delineation of the Intermarket Sweep exception than is required by the National Market System specifications).¹⁷ 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 Rules 4632C, 4632D and 4632E 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 published by NASD regarding priorities among modifiers, if such guidance is provided. 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 Rules of the Subject TRFs to Conform to NASD/Nasdaq TRF and ADF Rules

NASD is proposing changes to conform, to the extent practicable, the reporting rules of the Subject TRFs to the NASD/Nasdaq TRF and ADF reporting rules.

Specifically, NASD is proposing to reorganize Rule 4632C relating to the NASD/NSX TRF, Rule 4632D relating to the NASD/BSE TRF and Rule 4632E relating to the NASD/NYSE TRF and renumber paragraphs (a)(3) and (a)(5) of Rule 4632C, paragraphs (a)(3) and (a)(6) of Rule 4632D and paragraphs (a)(3) and (a)(6) of Rule 4632E, without

¹⁷ 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.

amending the text of those provisions. NASD also is proposing to renumber paragraphs (a)(4), (a)(6) and (a)(8) of Rule 4632C, paragraphs (a)(5), (a)(8) and (a)(10) of Rule 4632D and paragraphs (a)(5), (a)(8) and (a)(10) of Rule 4632E, and amend the text of those provisions to conform to the text of the equivalent provisions in Rule 4632 relating to the NASD/Nasdaq TRF.

Additionally, NASD is proposing to adopt new Rules 4632C(a)(5), 4632D(a)(5) and 4632E(a)(5) to require members to use trade report modifiers designated by NASD for certain enumerated transactions. As with the NASD/Nasdaq TRF and ADF, members will be required to include such modifiers on all trade reports, including reports of “as/of” trades.¹⁸ Consistent with SR-NASD-2007-001 and SR-NASD-2007-002, the proposed amendments to Rules 4632C, 4632D and 4632E would delete the labels (e.g., .T or .W) for the modifiers that members are required to use when reporting the enumerated transactions. Thus, Rules 4632C, 4632D and 4632E would identify the types of transactions that must have a unique identifier associated with them and such modifiers would be labeled in the system technical specifications rather than in the rules.

It should be noted that because of differences in functionality, not all of the rules

¹⁸ The NASD/NSX TRF currently does not accept “as/of” trade reports and the rules for the NASD/BSE TRF, which have been approved by the Commission but are not yet effective, also do not permit the submission of “as/of” trade reports. NASD will file a separate proposed rule change to reflect the reporting of “as/of” trades to the NASD/NSX TRF and NASD/BSE TRF. Thus, upon the operative date of this proposed rule change, members will be required to append all applicable trade report modifiers to “as/of” trade reports submitted to the NASD/NSX TRF and the NASD/BSE TRF.

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.

relating to NASD's Trade Reporting Facilities are identical. For example, unlike the NASD/Nasdaq TRF, the NASD/BSE TRF and the NASD/NYSE TRF, pursuant to current Rule 4632C(a)(7), the NASD/NSX TRF does not accept trade reports for Stop Stock Transactions (as such term is defined in Rule 4200C), transactions occurring at prices based on average-weighting or other special pricing formulae, or transactions that reflect a price different from the current market when the execution price is based on a prior reference point in time. In this proposed rule change, NASD is proposing to renumber Rule 4632C(a)(7) as 4632C(a)(8) without amending the text of the rule.

In addition, neither the NASD/NSX TRF nor the NASD/BSE TRF will accept trades reported as other than regular way settlement (see Rules 6130C(a) and 6130D(a), respectively). Thus, unlike Rule 4632(a)(5) relating to the NASD/Nasdaq TRF and Rule 4632E(a)(5) relating to the NASD/NYSE TRF, proposed Rules 4632C(a)(5) and 4632D(a)(5) do not include provisions pertaining to trade report modifiers for Seller's Option, Cash or Next Day transactions.

As discussed in note 18 above, the NASD/NSX TRF and NASD/BSE TRF rules currently do not provide for the submission of "as/of" trade reports; however, once the necessary system changes have been made, NASD will file a separate proposed rule change proposing amendments to Rules 4632C(a)(2)(B) and (D) and 4632D(a)(2)(B) and (D) that are consistent with Rule 4632(a)(2)(B) and (D) and proposed Rule 4632E(a)(2)(B) and (D).

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,¹⁹ NASD proposes to make the proposed rule change operative on the Pilot Stocks Phase Date, which is currently anticipated to be July 9, 2007. However, members may begin submitting trade reports to the Subject TRFs in compliance with the proposed rule change after the Trading Phase Date, which is currently anticipated to be March 5, 2007. This does not change in any way a member's responsibilities under the Regulation NMS compliance dates.²⁰

(b) Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,²¹ 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 See Securities Exchange Act Release No. 55160 (January 24, 2007), 72 FR 4202 (January 30, 2007).

²⁰ NASD notes that although the proposed rule change will not be operative until the Pilot Stocks Phase Date, members may be required to meet the Regulation NMS message format requirements for reporting to the Subject TRFs prior to that date. NASD will notify members of the date of mandatory compliance with Regulation NMS message formatting requirements for the Subject TRFs and on such date, members will be required to report in accordance with the new systems requirements, although the specific new modifiers proposed herein would continue to be voluntary until the Pilot Stocks Phase Date.

²¹ 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,²² 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 amendments to the ADF trade reporting requirements, which were subject to notice and comment and approved by the SEC on September 28, 2006,²³ and amendments to the NASD/Nasdaq TRF rules that were filed for immediate effectiveness on January 8, 2007.²⁴ In accordance with Rule 19b-4, NASD submitted written notice of its intent to file the

²² 17 CFR 240.19b-4(f)(6).

²³ See Securities Exchange Act Release No. 54537 (September 28, 2006), 71 FR 59173 (October 6, 2006) (order approving SR-NASD-2006-091). See also Securities Exchange Act Release No. 55088 (January 11, 2007), 72 FR 2573 (January 19, 2007) (notice of filing and immediate effectiveness of SR-NASD-2007-001).

²⁴ See Securities Exchange Act Release No. 55101 (January 12, 2007), 72 FR 2568 (January 19, 2007) (notice of filing and immediate effectiveness of SR-NASD-2007-002).

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.

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 5. Text of proposed rule change marked to show additions to and deletions from the current rule language.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-NASD-2007-014)

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 Rules Relating to the NASD/NSX TRF, NASD/BSE TRF and NASD/NYSE TRF 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 (1) amendments to the transaction reporting rules relating to the NASD/NSX Trade Reporting Facility (the “NASD/NSX TRF”), the NASD/BSE Trade Reporting Facility (the “NASD/BSE TRF”) and the NASD/NYSE Trade Reporting Facility (the “NASD/NYSE TRF”) (collectively referred to herein as the “Subject TRFs”)

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 CFR 240.19b-4.

consistent with the new requirements of Regulation NMS under the Act,⁴ and (2) technical amendments to conform, to the extent practicable, the reporting rules of the Subject TRFs to the reporting rules of the NASD/Nasdaq Trade Reporting Facility (the “NASD/Nasdaq TRF”) and NASD’s Alternative Display Facility (the “ADF”). The text of the proposed rule change is attached as Exhibit 5 to this rule filing.⁵

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,⁶

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

⁵ Prior to the implementation of amendments proposed herein on the Pilot Stocks Phase Date, NASD expects to file proposed rule changes that will amend the existing rule text set forth in Exhibit 5. NASD is clarifying that all changes in subsequent filings, unless explicitly stated otherwise in such subsequent filings, will be incorporated into the changes proposed herein (i.e., implementation of the changes proposed herein on the Pilot Stocks Phase Date should not negate any intervening rule changes).

⁶ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

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.⁷

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.⁸ There currently are nine exceptions and two exemptions to the Order Protection Rule.⁹ 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.

⁷ 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.”

⁸ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

⁹ 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).

On November 6, 2006, the Commission approved the establishment of the NASD/NSX TRF.¹⁰ On December 13, 2006, the Commission approved the establishment of the NASD/BSE TRF.¹¹ On February 1, 2007, NASD filed for immediate effectiveness a proposed rule change relating to the establishment of the NASD/NYSE TRF.¹² The Subject TRFs provide members additional mechanisms for reporting locked-in trades in exchange-listed securities executed otherwise than on an exchange.

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

¹⁰ See Securities Exchange Act Release No. 54715 (November 6, 2006), 71 FR 66354 (November 14, 2006) (order approving SR-NASD-2006-108). The NASD/NSX TRF commenced operation for the reporting of over-the-counter trades in Nasdaq-listed securities on November 27, 2006 and is expected to expand to the reporting of over-the-counter trades in all exchange-listed securities in the first quarter of 2007.

¹¹ See Securities Exchange Act Release No. 54931 (December 13, 2006), 71 FR 76409 (December 20, 2006) (order approving SR-NASD-2006-115). The NASD/BSE TRF will commence operation upon successful completion of system testing and certification (currently anticipated to be in the first quarter of 2007).

¹² See SR-NASD-2007-011, available at http://www.nasd.com/RulesRegulation/RuleFilings/2007RuleFilings/NASDW_018450. The NASD/NYSE TRF will commence operation upon successful completion of system testing and certification (currently anticipated to be in the first quarter of 2007).

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 an NASD Trade Reporting Facility. Such regulation includes monitoring for whether trading centers are reporting trades to an NASD Trade Reporting Facility that are trade-throughs of protected quotes and whether such trade-throughs are permissible under one of the specific exceptions and exemptions under the Order Protection Rule.

Proposed Amendments to Align the Rules of the Subject TRFs with Regulation NMS

NASD is proposing to amend Rule 4632C relating to the NASD/NSX TRF, Rule 4632D relating to the NASD/BSE TRF and Rule 4632E relating to the NASD/NYSE TRF 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 transaction reporting requirements relating to the ADF, which were approved by the Commission on September 28, 2006,¹³ and the NASD/Nasdaq TRF, which were filed for

¹³ See Securities Exchange Act Release No. 54537 (September 28, 2006), 71 FR 59173 (October 6, 2006) (order approving SR-NASD-2006-091). See also Securities Exchange Act Release No. 55088 (January 11, 2007), 72 FR 2573 (January 19, 2007) (notice of filing and immediate effectiveness of SR-NASD-2007-001).

Unlike the ADF, an NASD Trade Reporting Facility (e.g., the NASD/NSX 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 rules relating to the NASD Trade Reporting Facilities.

immediate effectiveness on January 8, 2007.¹⁴

Specifically, NASD is proposing to adopt new paragraph (a)(5)(C) of Rule 4632C, paragraph (a)(5)(F) of Rule 4632D and paragraph (a)(5)(I) of Rule 4632E 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 to adopt new paragraph (a)(5)(D) of Rule 4632C, paragraph (a)(5)(G) of Rule 4632D and paragraph (a)(5)(J) of Rule 4632E 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 4632C(a)(5)(C), Rule 4632D(a)(5)(F) and Rule 4632E(a)(5)(I), respectively, a unique modifier, specified by NASD, that identifies the specific applicable exception or exemption from SEC Rule 611 upon which the member is relying.¹⁵ 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, along with the respective Subject TRFs, will publish technical specifications regarding the specific modifiers required under the proposed new rules.

¹⁴ See Securities Exchange Act Release No. 55101 (January 12, 2007), 72 FR 2568 (January 19, 2007) (notice of filing and immediate effectiveness of SR-NASD-2007-002).

¹⁵ 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.

Additionally, NASD is proposing to adopt new paragraph (a)(5)(E) of Rule 4632C, paragraph (a)(5)(H) of Rule 4632D and paragraph (a)(5)(K) of Rule 4632E to require members 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 and also was incorporated in Rule 4632 relating to the NASD/Nasdaq TRF pursuant to SR-NASD-2007-002. Under this proposed provision, NASD will have the authority to prescribe additional trade report modifiers by updating the Technical Specifications for the Subject TRFs 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)¹⁶ 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).¹⁷ 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 Rules 4632C, 4632D and 4632E to expressly provide that in the event that the rules require multiple modifiers on any given trade

¹⁶ See supra note 9.

¹⁷ 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.

report, members are to report in accordance with guidance published by NASD regarding priorities among modifiers, if such guidance is provided. 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 Rules of the Subject TRFs to Conform to NASD/Nasdaq TRF and ADF Rules

NASD is proposing changes to conform, to the extent practicable, the reporting rules of the Subject TRFs to the NASD/Nasdaq TRF and ADF reporting rules.

Specifically, NASD is proposing to reorganize Rule 4632C relating to the NASD/NSX TRF, Rule 4632D relating to the NASD/BSE TRF and Rule 4632E relating to the NASD/NYSE TRF and renumber paragraphs (a)(3) and (a)(5) of Rule 4632C, paragraphs (a)(3) and (a)(6) of Rule 4632D and paragraphs (a)(3) and (a)(6) of Rule 4632E, without amending the text of those provisions. NASD also is proposing to renumber paragraphs (a)(4), (a)(6) and (a)(8) of Rule 4632C, paragraphs (a)(5), (a)(8) and (a)(10) of Rule 4632D and paragraphs (a)(5), (a)(8) and (a)(10) of Rule 4632E, and amend the text of those provisions to conform to the text of the equivalent provisions in Rule 4632 relating to the NASD/Nasdaq TRF.

Additionally, NASD is proposing to adopt new Rules 4632C(a)(5), 4632D(a)(5) and 4632E(a)(5) to require members to use trade report modifiers designated by NASD for certain enumerated transactions. As with the NASD/Nasdaq TRF and ADF, members will be required to include such modifiers on all trade reports, including reports of "as/of"

trades.¹⁸ Consistent with SR-NASD-2007-001 and SR-NASD-2007-002, the proposed amendments to Rules 4632C, 4632D and 4632E would delete the labels (e.g., .T or .W) for the modifiers that members are required to use when reporting the enumerated transactions. Thus, Rules 4632C, 4632D and 4632E would identify the types of transactions that must have a unique identifier associated with them and such modifiers would be labeled in the system technical specifications rather than in the rules.

It should be noted that because of differences in functionality, not all of the rules relating to NASD's Trade Reporting Facilities are identical. For example, unlike the NASD/Nasdaq TRF, the NASD/BSE TRF and the NASD/NYSE TRF, pursuant to current Rule 4632C(a)(7), the NASD/NSX TRF does not accept trade reports for Stop Stock Transactions (as such term is defined in Rule 4200C), transactions occurring at prices based on average-weighting or other special pricing formulae, or transactions that reflect a price different from the current market when the execution price is based on a prior reference point in time. In this proposed rule change, NASD is proposing to renumber Rule 4632C(a)(7) as 4632C(a)(8) without amending the text of the rule.

In addition, neither the NASD/NSX TRF nor the NASD/BSE TRF will accept trades reported as other than regular way settlement (see Rules 6130C(a) and 6130D(a),

¹⁸ The NASD/NSX TRF currently does not accept "as/of" trade reports and the rules for the NASD/BSE TRF, which have been approved by the Commission but are not yet effective, also do not permit the submission of "as/of" trade reports. NASD will file a separate proposed rule change to reflect the reporting of "as/of" trades to the NASD/NSX TRF and NASD/BSE TRF. Thus, upon the operative date of this proposed rule change, members will be required to append all applicable trade report modifiers to "as/of" trade reports submitted to the NASD/NSX TRF and the NASD/BSE TRF.

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.

respectively). Thus, unlike Rule 4632(a)(5) relating to the NASD/Nasdaq TRF and Rule 4632E(a)(5) relating to the NASD/NYSE TRF, proposed Rules 4632C(a)(5) and 4632D(a)(5) do not include provisions pertaining to trade report modifiers for Seller's Option, Cash or Next Day transactions.

As discussed in note 18 above, the NASD/NSX TRF and NASD/BSE TRF rules currently do not provide for the submission of "as/of" trade reports; however, once the necessary system changes have been made, NASD will file a separate proposed rule change proposing amendments to Rules 4632C(a)(2)(B) and (D) and 4632D(a)(2)(B) and (D) that are consistent with Rule 4632(a)(2)(B) and (D) and proposed Rule 4632E(a)(2)(B) and (D).

NASD has filed the proposed rule change for immediate effectiveness. In accordance with the Regulation NMS compliance dates established by the Commission,¹⁹ NASD proposes to make the proposed rule change operative on the Pilot Stocks Phase Date, which is currently anticipated to be July 9, 2007. However, members may begin submitting trade reports to the Subject TRFs in compliance with the proposed rule change after the Trading Phase Date, which is currently anticipated to be March 5, 2007. This does not change in any way a member's responsibilities under the Regulation NMS compliance dates.²⁰

¹⁹ See Securities Exchange Act Release No. 55160 (January 24, 2007), 72 FR 4202 (January 30, 2007).

²⁰ NASD notes that although the proposed rule change will not be operative until the Pilot Stocks Phase Date, members may be required to meet the Regulation NMS message format requirements for reporting to the Subject TRFs prior to that date. NASD will notify members of the date of mandatory compliance with Regulation NMS message formatting requirements for the Subject TRFs and on such date, members will be required to report in accordance with the new systems

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,²¹ 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.

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

requirements, although the specific new modifiers proposed herein would continue to be voluntary until the Pilot Stocks Phase Date.

²¹ 15 U.S.C. 78o-3(b)(6).

to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder.²² NASD believes that the filing is appropriately designated as “non-controversial” because the proposed rule change is substantially similar to amendments to the ADF trade reporting requirements, which were subject to notice and comment and approved by the SEC on September 28, 2006,²³ and amendments to the NASD/Nasdaq TRF rules that were filed for immediate effectiveness on January 8, 2007.²⁴ 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 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:

²² 17 CFR 240.19b-4(f)(6).

²³ See Securities Exchange Act Release No. 54537 (September 28, 2006), 71 FR 59173 (October 6, 2006) (order approving SR-NASD-2006-091). See also Securities Exchange Act Release No. 55088 (January 11, 2007), 72 FR 2573 (January 19, 2007) (notice of filing and immediate effectiveness of SR-NASD-2007-001).

²⁴ See Securities Exchange Act Release No. 55101 (January 12, 2007), 72 FR 2568 (January 19, 2007) (notice of filing and immediate effectiveness of SR-NASD-2007-002).

- 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-2007-014 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-2007-014. 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-2007-014 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.²⁵

Nancy M. Morris

Secretary

²⁵ 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.¹

* * * * *

4000C. THE NASD/NSX TRADE REPORTING FACILITY

* * * * *

4632C. Transaction Reporting

(a) When and How Transactions are Reported

(1) No Change.

(2) Transaction Reporting to the NASD/NSX 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 6:30 p.m. [as .T trades] with the appropriate trade report modifier as specified by NASD.

¹

Prior to the implementation of amendments proposed below on the Pilot Stocks Phase Date, NASD expects to file proposed rule changes that will amend the existing rule text provided below. NASD is clarifying that all changes in subsequent filings, unless explicitly stated otherwise in such subsequent filings, will be incorporated into the changes proposed below (i.e., implementation of the proposed changes below on the Pilot Stocks Phase Date should not negate any intervening rule changes).

(B) Last sale reports of transactions in designated securities executed between the hours of 4:00 p.m. and 6:30 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.] Transactions not reported before 6:30 p.m. cannot be reported through the NASD/NSX Trade Reporting Facility. Participants must use an alternative electronic mechanism to report these trades.

(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 6:30 p.m. [as .T trades] with the appropriate trade report modifier as specified by NASD.

(D) No Change.

[(3) Participants must use an alternative electronic mechanism, and comply with all rules applicable to such alternative mechanism, to report transactions to NASD in designated securities for which electronic submission to the NASD/NSX Trade Reporting Facility is not possible. Where last sale reports of transactions in designated securities cannot be submitted to NASD via an alternative electronic mechanism (e.g., the ticker symbol for the security is no

longer available or a market participant identifier is no longer active), members shall report such transactions as soon as practicable to the NASD Market Regulation Department on Form T. Transactions that can be reported to NASD electronically, 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 trade tickets for transactions in designated securities shall be time-stamped at the time of execution based on Eastern Time.]

[(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.]

[(5)] [(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.

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

[(7) Stop Stock Transactions (as such term is defined in Rule 4200C), transactions occurring at prices based on average-weighting or other special

pricing formulae, or transactions that reflect a price different from the current market when the execution price is based on a prior reference point in time cannot be reported to the NASD/NSX Trade Reporting Facility. Participants must use an alternative electronic mechanism to report these types of transactions to NASD.]

[(8) To identify pre-opening and after-hours trades reported late, the NASD/NSX Trade Reporting Facility will convert the .T modifier to .ST for any report submitted to the NASD/NSX 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) 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 6:30 p.m. Eastern time) reported more than 90 seconds after execution;

(C) 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);

(D) 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 (C) 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

(E) 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/NSX 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/NSX 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/NSX Trade Reporting Facility will convert the late modifier, as applicable,

on any pre-opening or after-hours report submitted to the NASD/NSX Trade Reporting Facility more than 90 seconds after execution.

(8) Stop Stock Transactions (as such term is defined in Rule 4200C), transactions occurring at prices based on average-weighting or other special pricing formulae, or transactions that reflect a price different from the current market when the execution price is based on a prior reference point in time cannot be reported to the NASD/NSX Trade Reporting Facility. Participants must use an alternative electronic mechanism to report these types of transactions to NASD.

(9) Participants must use an alternative electronic mechanism, and comply with all rules applicable to such alternative mechanism, to report transactions to NASD in designated securities for which electronic submission to the NASD/NSX Trade Reporting Facility is not possible. Where last sale reports of transactions in designated securities cannot be submitted to NASD via an alternative electronic mechanism (e.g., the ticker symbol for the security is no longer available or a market participant identifier is no longer active), members shall report such transactions as soon as practicable to the NASD Market Regulation Department on Form T. Transactions that can be reported to NASD electronically, 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 (h) No Change.

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4000D. THE NASD/BSE TRADE REPORTING FACILITY

* * * * *

4632D. Transaction Reporting²

(a) When and How Transactions are Reported

(1) No Change.

(2) Transaction Reporting to the NASD/BSE 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]ransactions not reported before 9:30 a.m. shall be reported after 4:00 p.m. and before 6:30 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 6:30 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

²

Rule 4632D was adopted pursuant to SR-NASD-2006-115, which was approved by the Commission on December 13, 2006. See Securities Exchange Act Release No. 54931 (December 13, 2006), 71 FR 76409 (December 20, 2006) (order approving SR-NASD-2006-115). Rule 4632D will become effective, with the entire Rule 4000D Series, on the date on which the NASD/BSE Trade Reporting Facility commences operation, which date is currently anticipated to be in the first quarter of 2007.

reported within 90 seconds also shall be designated as .T trades.]

Transactions not reported before 6:30 p.m. cannot be reported through the NASD/BSE Trade Reporting Facility. Participants must use an alternative electronic mechanism to report these trades to NASD.

(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 6:30 p.m. [as .T trades] with the appropriate trade report modifier as specified by NASD.

(D) No Change.

[(3) Participants must use an alternative electronic mechanism, and comply with all rules applicable to such alternative mechanism, to report transactions to NASD in designated securities for which electronic submission to the NASD/BSE Trade Reporting Facility is not possible. Where last sale reports of transactions in designated securities cannot be submitted to NASD via an alternative electronic mechanism (e.g., the ticker symbol for the security is no longer available or a market participant identifier is no longer active), members shall report such transactions as soon as practicable to the NASD Market Regulation Department on Form T. Transactions that can be reported to NASD electronically, 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 based on Eastern Time.]

(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 NASD/BSE Trade Reporting Facility will append the .T modifier

or the .SLD modifier, as appropriate, to those reports submitted to the NASD/BSE 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 4200D) 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 NASD/BSE Trade Reporting Facility will convert the .T modifier to .ST for any report submitted to the NASD/BSE 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 occurs at a price based on an average weighting or another special pricing formula;

(C) if the trade is a Stop Stock Transaction (as defined in Rule 4200D) (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);

(D) 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);

(E) 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 6:30 p.m. Eastern time) reported more than 90 seconds after execution;

(F) 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);

(G) 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 (F) 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

(H) 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/BSE 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/BSE 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/BSE Trade Reporting Facility will convert the late modifier, as applicable, on any pre-opening or after-hours report submitted to the NASD/BSE Trade

Reporting Facility more than 90 seconds after execution.

(8) Participants must use an alternative electronic mechanism, and comply with all rules applicable to such alternative mechanism, to report transactions to NASD in designated securities for which electronic submission to the NASD/BSE Trade Reporting Facility is not possible. Where last sale reports of transactions in designated securities cannot be submitted to NASD via an alternative electronic mechanism (e.g., the ticker symbol for the security is no longer available or a market participant identifier is no longer active), members shall report such transactions as soon as practicable to the NASD Market Regulation Department on Form T. Transactions that can be reported to NASD electronically, 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 (i) No Change.

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4000E. THE NASD/NYSE TRADE REPORTING FACILITY

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4632E. Transaction Reporting³

(a) When and How Transactions are Reported

(1) No Change.

³

Rule 4632E was adopted pursuant to SR-NASD-2007-011, which was filed for immediate effectiveness on February 1, 2007. See SR-NASD-2007-0011, available at http://www.nasd.com/RulesRegulation/RuleFilings/2007RuleFilings/NASDW_018450. Rule 4632E will become effective, with the entire Rule 4000E Series, on the date on which the NASD/NYSE Trade Reporting Facility commences operation, which date is currently anticipated to be in the first quarter of 2007.

(2) Transaction Reporting to the NASD/NYSE 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 6:30 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 6:30 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 6:30 p.m. shall be reported on an “as/of” basis the following day between 8:00 a.m. and 6:30 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 6:30 p.m. [as .T trades] with the appropriate trade report modifier as specified by NASD.

(D) No Change.

[(3) Participants must use an alternative mechanism, and comply with all rules applicable to such alternative mechanism, to report transactions to NASD in designated securities for which electronic submission to the NASD/NYSE Trade Reporting Facility is not possible. Where last sale reports of transactions in designated securities cannot be submitted to NASD via an alternative electronic mechanism (e.g., the ticker symbol for the security is no longer available or a market participant identifier is no longer active), members shall report such transactions as soon as practicable to the NASD Market Regulation Department on Form T. Transactions that can be reported to NASD electronically, 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 based on Eastern Time.]

(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 NASD/NYSE Trade Reporting Facility will append the .T modifier or the .SLD modifier, as appropriate, to those reports submitted to the NASD/NYSE 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 4200E) 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 NASD/NYSE Trade Reporting Facility will convert the .T modifier to .ST for any report submitted to the NASD/NYSE 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 4200E) (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 6:30 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/NYSE 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/NYSE 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/NYSE Trade Reporting Facility will convert the late modifier, as
applicable, on any pre-opening or after-hours report submitted to the
NASD/NYSE Trade Reporting Facility more than 90 seconds after execution.

(8) Participants must use an alternative mechanism, and comply with all
rules applicable to such alternative mechanism, to report transactions to NASD in
designated securities for which electronic submission to the NASD/NYSE Trade

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

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