

OMB APPROVAL

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

File No. SR - 2007 - 032

Amendment No.

Proposed Rule Change by National Association of Securities Dealers

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

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

Exhibit 2 Sent As Paper Document



Exhibit 3 Sent As Paper Document

**Description**

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

Proposed rule change to adopt new Rule 5150 and amend Rule 9610 to provide NASD with authority to exempt members from certain new NASD trade reporting requirements.

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 officer.

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

Add

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

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

Add

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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

Add

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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 adopt new Rule 5150 to provide NASD with authority to exempt members from certain new NASD trade reporting requirements for the Alternative Display Facility (“ADF”) and the NASD Trade Reporting Facilities (“TRFs”) relating to Regulation NMS. Specifically, new Rule 5150 would allow member firms that are unable to complete necessary modifications to their order routing and/or trade reporting systems by the applicable compliance date to seek an exemption, not to exceed six months, from the new Regulation NMS-related trade report modifier requirements under NASD Rules 4632, 4632A, 4632C, 4632D and 4632E.² In addition, NASD is proposing a conforming change to Rule 9610 to clarify that NASD has exemptive authority under proposed Rule 5150.

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

* * * * *

¹ 15 U.S.C. 78s(b)(1).

² NASD will limit the use of such exemptive authority to address implementation issues concerning: (1) the self-help modifier; (2) the qualified contingent trade modifier; (3) the sub-penny modifier; and (4) the modifier used to distinguish between inbound and outbound intermarket sweep orders.

5000. TRADING OTHERWISE THAN ON AN EXCHANGE

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5150. Exemption From Regulation NMS-Related Trade Reporting Requirements

Pursuant to the Rule 9600 Series, the staff for good cause shown after taking into consideration all relevant factors, may exempt, subject to specified terms and conditions, a member from the requirements under NASD Rules to report the applicable trade report modifiers related to SEC Rule 611 of Regulation NMS under the Act, if such exemption is consistent with the protection of investors and the public interest. The duration of any exemption granted pursuant to this Rule shall be determined by NASD and shall not exceed a period of six months. NASD intends to exercise the exemptive authority herein on a temporary basis and as such, this rule will automatically sunset one year after the Pilot Stocks Phase Date, currently scheduled to occur on July 9, 2007.

* * * * *

9600. PROCEDURES FOR EXEMPTIONS

9610. Application

(a) Where to File

A member seeking exemptive relief as permitted under Rules 1021, 1050, 1070, 2210, 2315, 2320, 2340, 2520, 2710, 2720, 2790, 2810, 2850, 2851, 2860, Interpretive Material 2860-1, 3010(b)(2), 3020, 3150, 3230, 5100, 5150, 6958, 8211, 8213, 11870, or 11900, or Municipal Securities Rulemaking Board Rule G-37 shall file a written application with the appropriate department or staff of NASD and provide a copy of the application to the Office of General Counsel of NASD.

(b) through (c) No Change.

* * * * *

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change to amend certain NASD rules as necessary to effectuate Regulation NMS was approved by the NASD Markets, Services and Information Committee at its meeting on February 1, 2006, which authorized the filing of the rule change with the SEC. 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 this proposed rule change. Section 1(a)(ii) of Article VII of the NASD By-Laws permits the NASD Board of Governors to adopt amendments to NASD Rules without recourse to the membership for approval.

NASD has filed the proposed rule change for immediate effectiveness. The operative date for the adoption of new Rule 5150 and a conforming change to Rule 9610 will be the date of filing. NASD intends to exercise the exemptive authority proposed herein on a temporary basis and as such, the proposed rule change will automatically sunset one year after the Pilot Stocks Phase Date, currently scheduled to occur on July 9, 2007.

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

(a) Purpose

On June 29, 2005, the SEC published its release adopting Regulation NMS,³ 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.⁴ There currently are nine exceptions and two exemptions to the Order Protection Rule.⁵

NASD does not qualify as a trading center within the meaning of Regulation NMS.⁶ However, NASD has a responsibility to enforce requirements under the Act that apply to activity within its regulatory authority. Unlike exchanges that have direct Regulation NMS obligations with respect to the SRO trading facilities, NASD has

³ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

⁴ 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."

⁵ Id. See also 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).

⁶ It should be noted that while NASD is not a trading center, market participants that quote in NMS stocks in the ADF are trading centers.

indirect Regulation NMS obligations with respect to all over-the-counter market activity in NMS stocks, including post-trade regulation for compliance with the Order Protection Rule with respect to trading centers that trade report through the ADF or a TRF.

Consistent with Regulation NMS, NASD amended its rules governing trade reporting to the ADF and TRFs to require reporting members to append applicable modifiers to last sale transaction reports for trades that fall within the SEC Rule 611 exceptions and exemptions.⁷ The amendments to the ADF trade reporting rules (specifically, Rule 4632A) became operative on March 5, 2007. The amendments to the trade reporting rules relating to the TRFs (specifically, Rules 4632, 4632C, 4632D and 4632E) will become operative on the Regulation NMS Pilot Stocks Phase Date, which is scheduled to occur on July 9, 2007.⁸

The Financial Information Forum submitted a comment letter in response to these rule amendments (the “FIF Letter”).⁹ The FIF Letter states that implementation of the

⁷ See generally, Securities Exchange Act Release No. 54537 (September 28, 2006), 71 FR 59173 (October 6, 2006) (approval of SR-NASD-2006-091, amending ADF rules); 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, amending ADF rules); 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, amending NASD/Nasdaq TRF rules); and Securities Exchange Act Release No. 55346 (February 26, 2007), 72 FR 9807 (March 5, 2007) (notice of filing and immediate effectiveness of SR-NASD-2007-014, amending NASD/NSX TRF rules, NASD/BSE TRF rules, and NASD/NYSE TRF rules).

⁸ Members may submit trade reports to the TRFs in compliance with the Regulation NMS requirements on a voluntary basis prior to the Pilot Stocks Phase Date.

⁹ See, Letter from Manisha Kimmel, Executive Director, FIF, on behalf of the FIF Regulation NMS Working Group, to Nancy M. Morris, Secretary, Securities and

new NASD trade reporting modifiers relating to Regulation NMS (specifically, the self-help modifier, the qualified contingent trade modifier, the sub-penny modifier, and the modifier used to distinguish between inbound and outbound intermarket sweep orders) will require additional development efforts and will present a challenge to certain member firms. The FIF Letter further asserts that implementation of the self-help modifiers in particular will be a time-consuming and costly effort and, without substantial development changes, some firms may be forced to not implement self-help to the detriment of their customers. Finally, the FIF Letter states that if NASD determines that it must have this information for regulatory reasons, firms should be given more time to modify their systems and requests that the compliance date for the new trade report modifiers for purposes of reporting to a TRF be moved to the Regulation NMS Completion Date, which is currently anticipated to be October 8, 2007.

In response to the FIF Letter and in recognition of the technological burdens that the new NASD trade report requirements may impose on some members, NASD is proposing to adopt new Rule 5150 to provide NASD with exemptive authority. Specifically, Rule 5150 would allow members that are unable to complete necessary systems changes by the applicable compliance date to seek a temporary exemption from the new trade report requirements related to Regulation NMS found in Rules 4632, 4632A, 4632C, 4632D and 4632E. NASD will only grant such an exemption on a firm-by-firm basis, for good cause shown after taking into consideration all relevant factors and only if it is consistent with the protection of investors and the public interest.

In general, the new trade reporting requirements provide critical information for purposes of NASD's Regulation NMS regulatory program. As such, NASD does not intend to grant exemptions under the proposed Rule except in exceptional circumstances and only where the requester has demonstrated that it has made best efforts to comply in a timely fashion with the new trade reporting requirements related to Regulation NMS and there is a specific, limited problem or issue preventing the member from achieving full compliance. Among other things, members requesting an exemption will be required to: (1) explain why they are unable to complete the necessary systems changes by the applicable compliance date; (2) identify the specific new Regulation NMS-related trade reporting modifier(s) (e.g., self-help) that the firm is unable to implement in a timely manner, and (3) provide an estimated completion date for the outstanding systems work and full compliance. As set forth in the proposed rule, NASD will determine the duration of any exemption, which shall not exceed six months. Moreover, since concerns raised by the industry relate only to certain Regulation NMS-related trade modifiers (the self-help modifier, the qualified contingent trade modifier, the sub-penny modifier, and the modifier used to distinguish between inbound and outbound intermarket sweep orders), NASD will only exercise exemptive authority under this rule proposal to address implementation issues related to these particular modifiers.

NASD intends to exercise the exemptive authority proposed herein on a temporary basis and as such, the proposed rule change will automatically sunset one year after the Pilot Stocks Phase Date, currently scheduled to occur on July 9, 2007. As noted in Item 2 of this filing, NASD has filed the proposed rule change for immediate

effectiveness.¹⁰ The proposed rule change will become operative upon filing with the SEC.

(b) Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹¹ which requires, among other things, that NASD rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed exemptive authority is appropriate because it will allow NASD to address certain implementation issues as they arise.

4. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

While NASD did not solicit comments on the proposed rule change, as discussed above, NASD did receive a comment letter in connection with SR-NASD-2007-002.¹² NASD is filing the proposed rule change specifically to address this comment letter and the concerns raised by the commenter about the burdens associated with implementation of the new Regulation NMS-related trade report modifiers. As noted above, NASD has

¹⁰ NASD is filing this proposed rule change for immediate effectiveness to allow NASD to address exemptive requests immediately without regard to when the changes to the underlying trade reporting rules are operational.

¹¹ 15 U.S.C. 78o-3(b)(6).

¹² See, FIF Letter, supra at note 9.

determined that the Regulation NMS-related modifiers required under the NASD trade reporting rules are crucial to its regulatory program and does not agree with the commenter that the self-help modifier should be optional. NASD believes that the proposed exemptive authority strikes a fair balance between the needs of NASD's regulatory program and member concerns regarding the timing and burdens of the necessary systems changes. The proposed rule change should alleviate such burdens by affording members additional time, if needed, to make the necessary systems changes relating to the self-help modifier, the qualified contingent trade modifier, the sub-penny modifier, and the modifier used to distinguish inbound and outbound intermarket sweep orders.

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)(1) of Rule 19b-4 thereunder,¹³ in that the proposed rule change is controlling the administration of an existing rule by providing NASD with exemptive authority to extend the effective date for compliance with such rules under certain circumstances. NASD is filing this proposal for immediate effectiveness because it is responsive to members' concerns relating to amendments to NASD rules. Moreover, NASD seeks to ensure that members are afforded an opportunity to apply for an exemption from certain Regulation NMS-related trade reporting requirements for the

¹³ 17 CFR 240.19b-4(f)(1).

ADF and TRFs as soon as practicable, which will provide members more certainty regarding the timing of their obligations with respect to implementation of Regulation NMS-related systems changes. As noted above, NASD is proposing that the proposed rule change become operative immediately upon filing and will automatically sunset one year after the Pilot Stocks Phase Date, currently scheduled to occur on July 9, 2007.

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 2. Letter from Manisha Kimmel, Executive Director, FIF, on behalf of the FIF Regulation NMS Working Group, to Nancy Morris, Secretary, Securities and Exchange Commission, dated February 7, 2007, submitted in response to SR-NASD-2007-002.

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-NASD-2007-032)

Self-Regulatory Organizations: National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding NASD's Exemptive Authority Relating to Regulation NMS Trade Reporting Requirements

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 stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule" under Section 19(b)(3)(A)(i) of the Act³ and Rule 19b-4(f)(1) thereunder,⁴ 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 adopt new NASD Rule 5150 to provide NASD with authority to exempt members from certain new NASD trade reporting requirements for

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(i).

⁴ 17 CFR 240.19b-4(f)(1).

the Alternative Display Facility (“ADF”) and the NASD Trade Reporting Facilities (“TRFs”) relating to Regulation NMS. Below is the text of the proposed rule change.

Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

5000. TRADING OTHERWISE THAN ON AN EXCHANGE

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5150. Exemption From Regulation NMS-Related Trade Reporting Requirements

Pursuant to the Rule 9600 Series, the staff for good cause shown after taking into consideration all relevant factors, may exempt, subject to specified terms and conditions, a member from the requirements under NASD Rules to report the applicable trade report modifiers related to SEC Rule 611 of Regulation NMS under the Act, if such exemption is consistent with the protection of investors and the public interest. The duration of any exemption granted pursuant to this Rule shall be determined by NASD and shall not exceed a period of six months. NASD intends to exercise the exemptive authority herein on a temporary basis and as such, this rule will automatically sunset one year after the Pilot Stocks Phase Date, currently scheduled to occur on July 9, 2007.

* * * * *

9600. PROCEDURES FOR EXEMPTIONS

9610. Application

(a) Where to File

A member seeking exemptive relief as permitted under Rules 1021, 1050, 1070, 2210, 2315, 2320, 2340, 2520, 2710, 2720, 2790, 2810, 2850, 2851, 2860, Interpretive Material 2860-1, 3010(b)(2), 3020, 3150, 3230, 5100, 5150, 6958, 8211, 8213, 11870, or

11900, or Municipal Securities Rulemaking Board Rule G-37 shall file a written application with the appropriate department or staff of NASD and provide a copy of the application to the Office of General Counsel of NASD.

(b) through (c) No Change.

* * * * *

I. 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

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

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

establish protection against trade-throughs for NMS stocks.⁶ There currently are nine exceptions and two exemptions to the Order Protection Rule.⁷

NASD does not qualify as a trading center within the meaning of Regulation NMS.⁸ However, NASD has a responsibility to enforce requirements under the Act that apply to activity within its regulatory authority. 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 in NMS stocks, including post-trade regulation for compliance with the Order Protection Rule with respect to trading centers that trade report through the ADF or a TRF.

Consistent with Regulation NMS, NASD amended its rules governing trade reporting to the ADF and TRFs to require reporting members to append applicable modifiers to last sale transaction reports for trades that fall within the SEC Rule 611 exceptions and exemptions.⁹ The amendments to the ADF trade reporting rules

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 Id. See also 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).

⁸ It should be noted that while NASD is not a trading center, market participants that quote in NMS stocks in the ADF are trading centers.

⁹ See generally, Securities Exchange Act Release No. 54537 (September 28, 2006), 71 FR 59173 (October 6, 2006) (approval of SR-NASD-2006-091, amending

(specifically, Rule 4632A) became operative on March 5, 2007. The amendments to the trade reporting rules relating to the TRFs (specifically, Rules 4632, 4632C, 4632D and 4632E) will become operative on the Regulation NMS Pilot Stocks Phase Date, which is scheduled to occur on July 9, 2007.¹⁰

The Financial Information Forum submitted a comment letter in response to these rule amendments (the “FIF Letter”).¹¹ The FIF Letter states that implementation of the new NASD trade reporting modifiers relating to Regulation NMS (specifically, the self-help modifier, the qualified contingent trade modifier, the sub-penny modifier, and the modifier used to distinguish between inbound and outbound intermarket sweep orders) will require additional development efforts and will present a challenge to certain member firms. The FIF Letter further asserts that implementation of the self-help modifiers in particular will be a time-consuming and costly effort and, without substantial development changes, some firms may be forced to not implement self-help to the detriment of their customers. Finally, the FIF Letter states that if NASD determines that

ADF rules); 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, amending ADF rules); 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, amending NASD/Nasdaq TRF rules); and Securities Exchange Act Release No. 55346 (February 26, 2007), 72 FR 9807 (March 5, 2007) (notice of filing and immediate effectiveness of SR-NASD-2007-014, amending NASD/NSX TRF rules, NASD/BSE TRF rules, and NASD/NYSE TRF rules).

¹⁰ Members may submit trade reports to the TRFs in compliance with the Regulation NMS requirements on a voluntary basis prior to the Pilot Stocks Phase Date.

¹¹ See, Letter from Manisha Kimmel, Executive Director, FIF, on behalf of the FIF Regulation NMS Working Group, to Nancy M. Morris, Secretary, Securities and Exchange Commission, dated February 7, 2007, submitted in response to SR-NASD-2007-002.

it must have this information for regulatory reasons, firms should be given more time to modify their systems and requests that the compliance date for the new trade report modifiers for purposes of reporting to a TRF be moved to the Regulation NMS Completion Date, which is currently anticipated to be October 8, 2007.

In response to the FIF Letter and in recognition of the technological burdens that the new NASD trade report requirements may impose on some members, NASD is proposing to adopt new Rule 5150 to provide NASD with exemptive authority. Specifically, Rule 5150 would allow members that are unable to complete necessary systems changes by the applicable compliance date to seek a temporary exemption from the new trade report requirements related to Regulation NMS found in Rules 4632, 4632A, 4632C, 4632D and 4632E. NASD will only grant such an exemption on a firm-by-firm basis, for good cause shown after taking into consideration all relevant factors and only if it is consistent with the protection of investors and the public interest.

In general, the new trade reporting requirements provide critical information for purposes of NASD's Regulation NMS regulatory program. As such, NASD does not intend to grant exemptions under the proposed Rule except in exceptional circumstances and only where the requester has demonstrated that it has made best efforts to comply in a timely fashion with the new trade reporting requirements related to Regulation NMS and there is a specific, limited problem or issue preventing the member from achieving full compliance. Among other things, members requesting an exemption will be required to: (1) explain why they are unable to complete the necessary systems changes by the applicable compliance date; (2) identify the specific new Regulation NMS-related trade reporting modifier(s) (e.g., self-help) that the firm is unable to implement in a timely

manner, and (3) provide an estimated completion date for the outstanding systems work and full compliance. As set forth in the proposed rule, NASD will determine the duration of any exemption, which shall not exceed six months. Moreover, since concerns raised by the industry relate only to certain Regulation NMS-related trade modifiers (the self-help modifier, the qualified contingent trade modifier, the sub-penny modifier, and the modifier used to distinguish between inbound and outbound intermarket sweep orders), NASD will only exercise exemptive authority under this rule proposal to address implementation issues related to these particular modifiers.

NASD intends to exercise the exemptive authority proposed herein on a temporary basis and as such, the proposed rule change will automatically sunset one year after the Pilot Stocks Phase Date, currently scheduled to occur on July 9, 2007. NASD has filed the proposed rule change for immediate effectiveness.¹² The proposed rule change will become operative upon filing with the SEC.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹³ which requires, among other things, that NASD rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed exemptive authority is appropriate because it will allow NASD to address certain implementation issues as they arise.

¹² NASD is filing this proposed rule change for immediate effectiveness to allow NASD to address exemptive requests immediately without regard to when the changes to the underlying trade reporting rules are operational.

¹³ 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

While NASD did not solicit comments on the proposed rule change, as discussed above, NASD did receive a comment letter in connection with SR-NASD-2007-002.¹⁴ NASD is filing the proposed rule change specifically to address this comment letter and the concerns raised by the commenter about the burdens associated with implementation of the new Regulation NMS-related trade report modifiers. As noted above, NASD has determined that the Regulation NMS-related modifiers required under the NASD trade reporting rules are crucial to its regulatory program and does not agree with the commenter that the self-help modifier should be optional. NASD believes that the proposed exemptive authority strikes a fair balance between the needs of NASD's regulatory program and member concerns regarding the timing and burdens of the necessary systems changes. The proposed rule change should alleviate such burdens by affording members additional time, if needed, to make the necessary systems changes relating to the self-help modifier, the qualified contingent trade modifier, the sub-penny modifier, and the modifier used to distinguish inbound and outbound intermarket sweep orders.

¹⁴ See, FIF Letter, supra at note 11.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and paragraph (f) of Rule 19b-4 thereunder.¹⁵ 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:

- 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-2007-032 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.

¹⁵ 17 CFR 240.19b-4.

All submissions should refer to File Number SR-NASD-2007-032. 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-2007-032 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.¹⁶

Nancy M. Morris

Secretary

¹⁶ 17 CFR 200.30-3(a)(12).

FINANCIAL INFORMATION FORUM

5 Hanover Square
New York, New York 10004

212-422-8568

February 7, 2007

Nancy M. Morris
Secretary, Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

RE: Financial Information Forum Comments on File Number SR-NASD-2007-002

Dear Ms. Morris:

The Financial Information Forum (FIF) welcomes the opportunity to comment on the proposed changes to NASD trade reporting to address Regulation NMS requirements. FIF (www.fif.com) was formed in 1996 to provide a centralized source of information on the implementation issues that impact the financial technology industry across the order lifecycle. Our participants include trading and back office service bureaus, broker-dealers, market data vendors and exchanges. Through topic-oriented working groups, FIF participants focus on critical issues and productive solutions to technology developments, regulatory initiatives, and other industry changes.

Background

With the release of final specifications for SIP data as well as TRF specifications for trade reporting in October 2006, firms have made implementation plans to move to a 4 byte sales condition code and 1 byte trade through exempt flag by the start of the Pilot Phase. The Rule 611 Reason trade modifiers (Byte 2 of Sales Condition Field) outlined in those specifications were as follows:

- F = Intermarket Sweep (for Inbound and Outbound)
- 4 = Derivatively Priced
- Additional modifiers applicable to automated trading centers only (Opening Price, Re-opening trade, Closing Price)

The December 19 release of new CTCI NASD/Nasdaq TRF specifications and January 12 release of new FIX NASD/Nasdaq specifications include several additional trade modifiers required for trade reporting in byte 2 including:

- Intermarket Sweep Outbound (separate from Inbound)
- Self-help
- Qualified Contingent Trades
- Sub-penny trades

While implementation of any new modifier represents additional development efforts, the incorporation of the self-help modifier poses unique challenges for firms that may not be justified given other less burdensome implementation options. FIF recommends leveraging what firms are already in the process of implementing to meet NASD's surveillance requirements.

Alternatives to consider:

- Include NASD on self-help notification emails when appropriate
- Provide documentation of self-help incident reports to NASD on demand instead of, or in addition to, an optional self-help flag

Self Help Implementation To Date

Rule 611 (b) (1) defines a self-help exempted trade as follows:

The transaction that constituted the trade-through was effected when the trading center displaying the protected quotation that was traded through was experiencing a failure, material delay, or malfunction of its systems or equipment.¹

Much like the flickering quote exemption, the self-help exemption relates to an environmental condition affecting the marketplace as a whole. As such, automated trading centers are establishing system status notifications to communicate system problems to their membership.

Additionally, the NMS Release specifies a minimum of three elements that must be included in a trading center's policies and procedures to comply with the self-help exception: (1) notice, (2) systems assessment and response, and (3) objective parameters.²

As part of reasonable self-help policies and in accordance with the guidance laid out in the recent set of FAQs³, firms have been integrating self-help procedures into their order routing and diagnostics systems. While implementation is specific to a firm's environment, several firms have architected their systems to address self-help as part of smart order routing processes such that execution and trade reporting systems only receive quotes from active, responsive markets. In other words, these trade execution systems do not distinguish between a market that does not have a BBO because of a system problem and a market that does not have a BBO because of their current liquidity.

NASD Proposed Self Help Compliance - Required Trade Modifiers

In SR-NASD-2007-002, NASD states that the purpose of the additional trade modifiers including the self-help modifier is 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."⁴

The use of a self-help trade modifier to achieve NASD's transparency and compliance objectives is not the most desirable implementation option for several reasons.

Uncertain Benefit to Unplanned & Costly Development Effort

Firms have been developing Regulation NMS compliant systems based on specifications that they understood to be final as of October 16 ("Specifications Date"). For those firms that architected their system to isolate self-help processing to market data and order routing systems, implementing self-help trade modifiers introduced at the end of December and in January will be a time-consuming and costly effort. Without substantial architectural/development changes, some firms may be forced to not implement self-help to the detriment of their customers.

Use of self-help is expected to be limited for several reasons including (1) ATCs have an affirmative obligation to address system problems appropriately and (2) the self-help modifier is only required when no other modifier applies. Given that the industry has no experience with

¹ Rule 611 (b)(1), <http://www.sec.gov/rules/final/34-51808.pdf>, p. 518

² 70 FR at 37519 & n. 174, 37521-37522 & n. 194, 37535 & n. 318.

³ See <http://www.sec.gov/divisions/marketreg/nmsfaq2.htm>

⁴ See p. 16, <http://www.sec.gov/rules/sro/nasd/2007/34-55101.pdf>

self-help, undertaking extensive system changes prior to the start of the Order Protection rule may not be justified.

Places Burden of Reporting Market Center Failures on Broker Dealers

The purpose of self-help is to allow market participants to continue trading when an automated trading center is experiencing system problems. Given that the appropriate use of self-help is based on when an ATC has a problem and given the fact that ATCs are establishing system status notification, these already established procedures should be sufficient to satisfy the need for transparency. Rather than require each broker dealer to develop self-help trade reporting functionality, monitoring of ATCs system notifications would alert NASD to times when an ATC is operating in self-help mode. Trade throughs reported to NASD during that time could be evaluated accordingly.

If at all possible, it would be preferable for the pre-established SEC requirements to also fulfill NASD requirements.

Potential Implementation Option - Include NASD on Self-help Email Notifications

As stated in both the release and the FAQs, notification via email is considered a reasonable procedure for notifying market centers of an issue. This same mechanism could be used to notify NASD of a system problem. The use of email would be effective in distinguishing between a system-wide problem which should result in a large volume of emails as opposed to an individual broker-dealer problem. Significant differences in email volume would be a useful surveillance mechanism without adding implementation complexity to the process.

Use of email notifications is not without its problems, issues such as reliability, integration of order routers with email servers and other problems may arise using this type of mechanism. Additionally, with no prior experience using self-help, it is premature to conclude that real-time reporting of self help is needed.

FIF Recommended Option - Provide NASD with Self-Help Documentation As Required

As part of reasonable policies and procedures for self-help, firms expect to keep an audit trail of self-help incidents. These records would be the most complete documentation of what occurred during a self-help incident and provide the best information with which to evaluate the appropriate use of self-help. As the industry gains experience with self-help, these incident reports could be evaluated and additional reporting could be pursued. Given that this approach meets NASD's regulatory objective with a minimal implementation effort, we recommend adopting this implementation alternative.

If the self-help trade modifier remains in the specification, we recommend making it a permissive field such that firms have the option to use the self-help modifier with the understanding that trade throughs occurring as a result of self-help that are not flagged will need to be justified with documentation in the event of an examination.

Implementation Timing Considerations

The magnitude and complexity of changes associated with implementing Rule 611 and the new ATC functionality should not be underestimated. If the implementation alternatives identified are not sufficient to meet NASD's regulatory needs, we respectfully request additional time to implement the new NASD modifiers that were added after the Final Specifications Date of October 16, 2006. Moving the compliance date for the new NASD trade modifiers to the "Completion Date" of October 8 would give firms the opportunity to implement the modifiers and

allow the industry to gain experience with Reg NMS changes generally and self-help in particular.

In summary, we hope that you consider the outlined alternatives to the use of the self-help trade modifier with the goal of achieving a reasonable balance between regulatory objectives and implementation costs.

Regards,

A handwritten signature in black ink, appearing to read "Manisha Kimmel", written in a cursive style.

Manisha Kimmel
Executive Director, Financial Information Forum
on behalf of the FIF Regulation NMS Working Group