

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55393; File No. SR-NASD-2007-016)

March 2, 2007

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend NASD Rules 4632C and 4632D to Reflect “As/Of” Trade Reporting and the Automated Reporting of Trade Cancellations to the NASD/NSX and NASD/BSE Trade Reporting Facilities

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 February 27, 2007, the National Association of Securities Dealers, Inc. (“NASD”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared substantially by the NASD. The NASD has filed this proposal pursuant to Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission.⁵ 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

The NASD proposes to amend NASD Rules 4632C, “Transaction Reporting,” and 4632D, “Transaction Reporting,” to reflect “as/of” (T+1) trade reporting and the automated reporting of trade cancellations to the NASD/NSX Trade Reporting Facility (the “NASD/NSX TRF”) and the NASD/BSE Trade Reporting Facility (the “NASD/BSE TRF”), respectively. The

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ The NASD has asked the Commission to waive the 30-day operative delay provided in Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).

proposed amendments are substantially identical to the current language of NASD Rule 4632, “Transaction Reporting,” relating to the NASD/Nasdaq Trade Reporting Facility (“NASD/Nasdaq TRF”), which the Commission approved on June 30, 2006.⁶ The text of the proposed rule change is available at the NASD, in the Commission’s Public Reference Room, and at www.nasd.com.

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

In its filing with the Commission, the 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. The 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

The Commission approved the establishment of the NASD/NSX TRF⁷ and the NASD/BSE TRF⁸ on November 6, 2006, and December 13, 2006, respectively. The

⁶ See Securities Exchange Act Release No. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006) (order approving File No. SR-NASD-2005-087).

⁷ See Securities Exchange Act Release No. 54715 (November 6, 2006), 71 FR 66354 (November 14, 2006) (order approving File No. SR-NASD-2006-108). The NASD/NSX TRF commenced operation for the reporting of over-the-counter (“OTC”) trades in Nasdaq-listed securities on November 27, 2006, and began accepting reports of OTC trades in non-Nasdaq exchange-listed securities on February 20, 2007.

⁸ See Securities Exchange Act Release No. 54931 (December 13, 2006), 71 FR 76409 (December 20, 2006) (order approving File No. 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).

NASD/NSX TRF and NASD/BSE TRF provide members with additional mechanisms for reporting locked-in trades in exchange-listed securities executed otherwise than on an exchange.

Currently, the NASD/NSX TRF does not accept reports of trades on an “as/of” or next day (T+1) basis and the NASD/BSE TRF rules also do not contemplate the submission of “as/of” trade reports. The rules relating to the NASD/NSX TRF and the NASD/BSE TRF expressly provide that members must use an alternative electronic mechanism to report “as/of” trades to the NASD.⁹

In addition, members can only electronically report trade cancellations to the NASD/NSX TRF on trade date; members cannot electronically report cancellations on an “as/of” basis. The rules require that for trades that are cancelled after the day of the execution of the trade, members must contact NASD/NSX TRF Operations to report the trade cancellation.¹⁰ With respect to the NASD/BSE TRF, members cannot electronically report any trade cancellations, irrespective of whether they occur on or after the trade date. The NASD/BSE TRF rules require members to contact NASD/BSE TRF Operations to report any cancellation of a trade previously submitted to the NASD/BSE TRF.¹¹

The NASD proposes to amend NASD Rules 4632C and 4632D to reflect a change in the functionality of the NASD/NSX TRF and NASD/BSE TRF, respectively, to support the reporting of trades on an “as/of” (T+1) basis and the automated reporting of trade cancellations. The NASD believes that by providing for the reporting of “as/of” trades, the proposed rule change will enhance transparency and the integrity of the audit trail. Additionally, the NASD

⁹ See NASD Rule 4632C(a)(2)(B) and (D), relating to the NASD/NSX TRF, and NASD Rule 4632D(a)(2)(B) and (D), relating to the NASD/BSE TRF.

¹⁰ See NASD Rule 4632C(f)(2)(B), (C), (E), and (F).

¹¹ See NASD Rule 4632D(g)(2)(A), (B), (C), (D), (E), and (F).

believes that by automating the reporting of trade cancellations, the proposed rule change will facilitate and streamline the correction of trades, as necessary.

The NASD anticipates that system testing and certification will be completed before the end of the first quarter of 2007. The NASD will announce the date that the system changes will be implemented on its Web site.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹² which requires, among other things, that the NASD's 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. The NASD believes that the proposed rule change will enhance investor protection by increasing transparency and the integrity of the audit trail.

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

The 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

The NASD has designated the proposed rule change as one that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection

¹² 15 U.S.C. 78o-3(b)(6).

of investors and the public interest. In addition, as required under Rule 19b-4(f)(6)(iii),¹³ the NASD provided the Commission with written notice of its intention to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to filing the proposal with the Commission. Therefore, the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁴ and Rule 19b-4(f)(6) thereunder.¹⁵

Pursuant to Rule 19b-4(f)(6)(iii) under the Act, a proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The NASD has asked the Commission to waive the 30-day operative delay to allow the proposed rule changes to be operative when the system changes for “as/of” trade reporting and the automated reporting of trade cancellations have been completed. The NASD believes that these system changes may be completed prior to the end of the 30-day operative delay period, and that it is crucial for a complete and accurate audit trail and market transparency that the NASD/NSX TRF and the NASD/BSE TRF be able to process and report trade corrections as quickly as possible. The NASD believes that a delay in the implementation of this functionality would not be in the interests of investors.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed changes could enhance the accuracy and integrity of the audit trail and facilitate the reporting of “as/of” trades and trade

¹³ 17 CFR 240.19b-4(f)(6)(iii).

¹⁴ 15 U.S.C. 78s(b)(3)(A).

¹⁵ 17 CFR 240.19b-4(f)(6).

cancellations.¹⁶ The Commission also notes that the proposed changes are substantially identical to the current language of NASD Rule 4632 relating to the NASD/Nasdaq TRF, which was subject to notice and comment.¹⁷ Accordingly, the Commission waives the 30-day operative delay and designates that the proposal become operative immediately.

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-2007-016 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.

¹⁶ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁷ See supra note 6.

All submissions should refer to File No. SR-NASD-2007-016. 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 the filing also will be available for inspection and copying at the principal office of the 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 No. SR-NASD-2007-016 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.¹⁸

Florence E. Harmon
Deputy Secretary

¹⁸ 17 CFR 200.30-3(a)(12).