BOSTON
STOCK EXCHANGE

October 24, 2006

Robert Colby
Deputy Director
Division of Market Regulation
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

RE: Accelerated Approval of NASD/BSE Trade Reporting Facility SR-NASD 2006-115

Dear Mr. Colby,

The Boston Stock Exchange, Inc. ("BSE") submitted a comment letter dated October 17, 2006, regarding the approval of NASD's filing for the NASD/NSX Trade Reporting Facility ("NTRF"). This comment letter requested the Commission to delay the effectiveness of such approval until it has had a chance, in the context of the pending, substantially similar BSE proposal, to determine whether, and on what terms and conditions, more than one non-Nasdaq Trade Reporting Facility is appropriate and consistent with the Act. Should the Commission decide to not delay the effectiveness of the NTRF proposal the BSE alternatively and respectfully requests the Commission grant accelerated approval of NASD's rule proposal for establishment of a new trade reporting facility by the NASD in conjunction with the BSE ("BTRF")[1]. This rule proposal is substantially similar to the NASD's rule proposal to establish another trade reporting facility by the NASD in conjunction with the National Stock Exchange ("National").[2] The NTRF would have an unfair competitive advantage over the BTRF if the NTRF is approved prior to the BTRF for Nasdaq listed securities reporting. As discussed more fully below, the BSE believes that once a NASD member becomes a Participant of one regional exchange operated TRF there may be no compelling reason to switch to another regional exchange operated TRF. The BSE believes the Commission should find the unfair competitive advantage provides good cause to accelerate approval of the BTRF

[1] See Securities Exchange Act Release No. 34-54591 (October 12, 2006), 71 FR 61519 (October 18, 2006), (notice of filing of SR-NASD-2006-115).
[2] See Securities Exchange Act Release No. 34-54479 (September 21, 2006), 71 FR 56573 (September 27, 2006), (notice of filing of SR-NASD-2006-108).

proposal that relates to Nasdaq listed securities reporting.[3] Moreover, since no new substantive issues have been raised in the BTRF proposal the Commission should grant the NASD accelerated approval of the BTRF proposal. The BSE also believes accelerating approval of the BTRF proposal to coincide with the substantially similar NTRF proposal would be consistent with Section 11A(a)(1)(C)(ii) of the Securities and Exchange Act of 1934 (the "Act")[4]. Section 11A(a)(1)(C)(ii) of the Act, states in relevant part, that "[i]t is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure . . .fair competition among brokers and broker dealers, among exchange markets, and between exchange markets and markets other than exchange markets . . ." Accordingly, the BSE requests the Commission grant accelerated approval of the BTRF proposal to coincide with the approval of the NTRF proposal.

Similarities of Proposed Rules

The NASD's proposed rules for the NTRF and BTRF are identical in the following respects:

i) General – the Trade Reporting Facility ("TRF") is to report transactions executed otherwise than on an exchange;
ii) Clearance and Settlement – A TRF shall clear and settle transactions in designated securities through the facilities of a registered clearing agency that uses a continuous net settlement system;
iii) Suspension and Termination – NASD may suspend, condition, limit prohibit or terminate a TRF services in one or more designated securities or terminate the service completely under certain conditions;
iv) When and How Transactions are Reported – Trades shall be reported within 90 seconds after execution, and if not shall be reported as late;
v) Trades Reported Outside Normal Market Hours – Trades executed outside of normal market hours of 9:30 am to 4:00 pm should be reported ".T" trades, and trades executed between 6:30 pm and midnight cannot be reported through the TRF;
vi) Where last sale reports cannot be submitted electronically members shall submit them on Form T;

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[3] Since the NASD will not have completed the necessary technical development to accept non-Nasdaq listed securities into their system until November 21, 2006, the BSE is not requesting accelerated approval for reporting of non-Nasdaq listed securities portion of the BTRF proposal. However, the BSE does not believe that the difference in the securities being reported to the TRFs is significant. This is because the off-exchange traded non-Nasdaq listed securities that the BTRF is proposing to report, and the NTRF has not yet proposed to report, are currently being reported, to the NASDAQ ACT, or TRACES. Therefore all NMS Stocks traded off-exchange are currently reported to and regulated by the NASD. This would merely be an alternative way of reporting these trades. Although, the NTRF proposal is limited to securities listed on the Nasdaq exchange, the NASD intends to file a subsequent proposed rule change to the NTRF to include the reporting of all NMS Stocks. Additionally, the Commission has already published for comment, an NASD filing SR-NASD-2006-104, on behalf of the NASD/Nasdaq Trade Reporting Facility, specifically allowing the NASD/Nasdaq TRF to include the reporting of all NMS Stocks instead of only Nasdaq listed stocks.

[4] 15 U.S.C. 78k-1(a)(1)(C)(ii).

vii) All trade tickets for transactions must be time-stamped at the time of execution;

viii) A pattern or practice of late reporting may be considered inconsistent with high standards of commercial honor and just and equitable principals.

ix) The TRF will append the .T, .SLD, and .ST modifiers when appropriate;

x) Stopped stock transactions and prior reference price transactions may not be reported to the TRF;

xi) Which Party Reports the Transaction – Sell side reports except Market Maker when between Market Maker and Non-Maker and member when between non-member and non-member;

xii) Information to be Reported for Two Party Reports – Symbol, quantity, price, buy –sell long/short/exempt indicator, execution time, OATS order identifier if applicable;

xiii) Price and Volume Reporting Procedures;

xiv) Transactions not to be Reported for Publication Purposes;

xv) Time Deadlines for Reporting Cancelled Trades;

xvi) Trading Halts – NASD has the authority to Initiate and Terminate Halts;

xvii) Trade Reporting Participant Requirements – Application Agreement, Clearing Membership or arrangement with a Clearing Member, compliance with all NASD and Commission rules, maintenance of physical security of equipment on premises; acceptance and settlement of each trade by such participant;

xviii) Participant Obligations – Access, System Participant Obligations and Clearing Broker Obligations;

xix) Reportable Transactions – Not already locked-in trades or trades that are not regular way cannot be reported.

xx) Trade cancellations are the responsibility of the member submitting the original trade report; and

xxi) Trade Reporting of Short Sales - NASD Rule 5100 or Short Sale Rule applies to Nasdaq Global Market securities and all sell transactions in all securities must have the appropriate indicator (sell, sell short, short sale exempt).

The NASD's proposed rules for the NTRF and BTRF include a Limited Liability Company Agreement between the NASD and the relevant exchange, which are identical in the following respects:

i) Purpose – to operate a facility of the NASD for Non-System Trading;
ii) Roles of Members – NASD shall have sole regulatory responsibility;
iii) Governance – Board shall consist of three Directors, one of which must be the a member of the NASD's Board of Governor's or an officer or employee of the NASD;
iv) Governance – NASD Director must approve all Major Actions;
v) Capital Contribution – initial contribution of $150,000;
vi) Profit and Losses – Shall be allocated solely to the exchange;
vii) Books and Records – SEC shall have the right to examine the Company's books and records which must be maintained in accordance with Section 17(a)(1) of the Exchange Act;
viii) Termination – For breach, bankruptcy, maintenance of NASD's status, convenience, or upon substantial trade volume.

Only one comment, submitted by the BSE, was submitted to the Commission regarding the NTRF proposal during the comment period, which has expired. However, the BSE commented on procedural issues of the NTRF and did not comment on any substantive issues of the NTRF proposal except to say that the BSE supports the establishment of the NTRF.

Differences of Proposed Rules

The NASD's proposed rules for the NTRF and BTRF are different in the following respects:

i) Transactions Not to be Reported for Publication Purposes – The BTRF has two additional types of transactions that shall not be reported to the tape. These are a) the acquisition of securities as principal in anticipation of making an exchange distribution or offering; and b) tender offer purchases; and
ii) Information Reports – The BTRF allows for the submission of Three Party Trade Reports while the NTRF only allows for Two Party Trade Reports; and

The NASD's proposed rules for the NTRF and BTRF include a Limited Liability Company Agreement between the NASD and the relevant exchange, which have no significant differences.

The BSE believes that the addition of two types of transactions that shall not be reported to the tape is consistent with current practice and is designed to protect the integrity of the tape and therefore insignificant. The use of three party trade reports already occurs in NASD's Alternative Display Facility and is just another way to report the same information so the BSE believes that to be an insignificant difference.

Finding Good Cause to Accelerate Approval

The BSE respectfully requests that the Commission find good cause to accelerate the approval of NASD's BTRF proposal to report Nasdaq listed securities by approving it simultaneously with the NASD's NTRF proposal. The BSE believes that NASD members are looking for an alternative to the Nasdaq operated TRF to report off-exchange trades in Nasdaq listed securities. One of the many reasons members are looking for an alternative to the Nasdaq operated TRF is that members believe regional TRFs will compete with the Nasdaq operated TRF by offering competitive pricing. If the Commission approves the NTRF proposal prior to the BTRF proposal the BSE believes the NTRF will have an unfair competitive advantage over the BTRF. NASD members will become Participants to the first TRF operated by a regional exchange so they can immediately commence reporting trades to a non-Nasdaq operated TRF. Once a member becomes a Participant of a regional TRF there may be no compelling reasons to switch to a different regional exchange operated TRF. Thus allowing the first regional exchange operated TRF to capture the lion's share of members seeking an alternative to the Nasdaq operated TRF. The BTRF raises no significant regulatory concerns that have not already been raised for public comment and approval of the NTRF prior to approval of another regional exchange operated TRF, would provide the NTRF with an unfair competitive advantage over the BTRF. Since Section 11A(a)(1)(C)(ii) of the Act requires "fair competition …, among exchange markets, between exchange markets and markets other than exchange markets…" the BSE respectfully requests the Commission to accelerate approval of the BTRF proposal to be approved simultaneously with the NTRF proposal.

Thank you for your attention in this matter. Please call me with any questions and comments on this letter at 617-235-2003.

Respectfully Submitted,

Alden Adkins
Executive Vice President
Boston Stock Exchange, Inc.

Cc: Stephanie Dumont