



April 2, 2002

Ms. Annette L. Nazareth  
Director  
Division of Market Regulation  
Securities and **Exchange** Commission  
450 Fifth Street, N.W.  
Washington, D.C. 20549-1001

**Re: NASD Rules 6950 through 6957**

Dear Ms. Nazareth:

**NASD** Regulation, Inc. (“**NASD** Regulation”) respectfully requests that the staff of the Division of Market Regulation (“**Division**”) of the Securities **and** Exchange Commission (“**Commission**” or “**SEC**”) provide assurances that it will not recommend enforcement action to the Commission if the **NASD** and **NASD** Regulation do not enforce **NASD** Rules 6950 through 6957 (the “**OATS** Rules”) under the facts and circumstances **described herein**. This request concerns the recording **and** reporting of order information as required under the **OATS** Rules by Bloomberg Tradebook LLC (“**Tradebook**”) and B-Trade **Services** LLC (“**B-Trade**”), which **are** both registered broker-dealers and **NASD** members.

#### Background

The Bloomberg Tradebook electronic communications network (the “**Bloomberg ECN**”), which **was** developed and is operated by Tradebook, matches limit orders in The Nasdaq Stock Market (“**Nasdaq**”) and listed equities on a confidential basis. Tradebook’s order management system collects participants’ limit orders and posts them on the Bloomberg ECN.

In 1996, Tradebook entered into a fully disclosed execution **and** clearing agreement (the “**Agreement**”) with B-Trade and BNY ESI & Co., Inc. (“**BNY ESI**”), **an** affiliate of B-Trade. Pursuant to the **Agreement**, Tradebook receives participants’ electronic orders matched on the Bloomberg ECN and, on **an** agency basis, introduces the transaction to B-Trade for execution. **This is** Tradebook’s only function **as** it relates to transactions in Nasdaq and listed equities. B-Trade then acts **as the execution** and comparison broker for the participants of the Bloomberg ECN that are broker-dealers, and BNY ESI acts as the settlement broker for such participants **and** the fully disclosed carrying **and** clearing broker for non-broker-dealer participants. Similar to Tradebook, B-Trade’s activities **as a** broker-dealer are limited to executing transactions

introduced to it by Tradebook. Tradebook's Market Participant ID ("MPID") is "BLTR" and B-Trade's MPID is "BTRD."

### Display of Quotations and ACT Reporting

In connection with the adoption of the SEC's Order Execution Rules (Rule 11Ac1-4 and amendments to Rule 11Ac1-1 under the Securities Exchange Act of 1934), Tradebook, B-Trade and Nasdaq agreed that the Bloomberg ECN would interface with Nasdaq's execution systems and would post orders in Nasdaq securities using B-Trade's MPID. Thus, limit orders received by the Bloomberg ECN are displayed in the Nasdaq montage under B-Trade's MPID. Brokers directing trades to the Bloomberg ECN via SelectNet also use B-Trade's MPID. Similarly, when the Bloomberg ECN sends orders to SuperSoes in Nasdaq National Market securities or orders to SelectNet in Nasdaq SmallCap securities, it uses B-Trade's MPID. Accordingly, executions through or involving the Bloomberg ECN are reported to ACT under B-Trade's MPID.

Because all transactions involving the Bloomberg ECN are executed through B-Trade, the use of B-Trade's MPID instead of Tradebook's MPID in dealing with executions through or within the Bloomberg ECN is consistent with the market's expectations that any orders sent to or from the Bloomberg ECN will result in executions with B-Trade. Further, because Tradebook's activities are limited to matching orders and introducing matched orders to B-Trade for execution, Tradebook is not conducting any activities that must be identified to the market through ACT.

### PATS Reporting

Currently, Tradebook retains the responsibility of recording and reporting OATS data for all electronic orders submitted to and executed through the Bloomberg ECN, even though B-Trade executes these orders. Because B-Trade is the executing broker, and B-Trade's MPID, rather than Tradebook's, is displayed on the Nasdaq quote montage and is used for ACT reporting, Tradebook submits OATS data to NASD Regulation using B-Trade's MPID.<sup>1</sup> Similarly, other members interfacing with the Bloomberg ECN use the MPID "BTRD" to identify the Bloomberg ECN for OATS reporting.

As a result, the current OATS reporting by Tradebook, B-Trade and other members is consistent with the use of B-Trade's MPID in the Nasdaq montage and ACT, and provides NASD Regulation with the OATS information necessary to construct a complete audit trail. It is not, however, in strict compliance with the OATS Rules. Currently, an order routed to the Bloomberg ECN is reported to OATS by Tradebook as an order received by B-Trade. Similarly, when other members route orders to the Bloomberg ECN, they submit Routing Reports showing

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<sup>1</sup> Tradebook submits New Order Reports, Routing Reports, Execution Reports, Cancel Reports and Cancel/Replace Reports with BTRD in the Order Receiving Firm MPID field.

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that the orders **were** routed to B-Trade. Pursuant to the **OATS** Rules, each member receiving an order must submit various **OATS** reports as applicable. Therefore, under a strict reading of the **OATS** Rules, Tradebook would be required to submit a **New Order Report** for each order received by the Bloomberg ECN. If Tradebook matches **two** orders and sends them to B-Trade for execution, Tradebook would be required to submit a **Routing Report** for both orders and B-Trade would be required to submit a **New Order Report** for each of the two orders received from Tradebook.

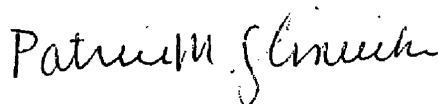
To bring their **OATS** reporting into technical compliance with the **OATS** Rules, Tradebook, B-Trade, and **all** members routing orders to the Bloomberg ECN would have to change their current **OATS** reporting practices to identify the member firm receiving the order, as well **as** the routing of orders between members. In addition, the **MPID** used to display limit orders on **the** Nasdaq montage from the Bloomberg ECN would have to be changed to reflect the Tradebook **MPID**, **BLTR**.

**NASD** Regulation staff believes that the current **OATS** reporting by Tradebook does not impair the staff's ability to create an accurate and complete, time-sequenced record of orders **and** transactions in Nasdaq securities for the following reasons: (1) all orders routed through the Bloomberg ECN are executed by B-Trade, (2) Tradebook does not route orders to any broker-dealer other than B-Trade; and (3) B-Trade only executes orders on behalf of the Bloomberg ECN and Tradebook. Strict compliance with the **OATS** Rules essentially would result in duplicative **OATS** reporting by Tradebook and B-Trade, which would not provide **any** additional regulatory information.

Accordingly, for the foregoing reasons, **NASD** Regulation respectfully requests that the Division staff provide assurances that it will not recommend enforcement action to the Commission if the **NASD** and **NASD** Regulation do not enforce the **OATS** Rules with respect to the specific facts **and** circumstances described herein.

If there are any questions concerning this request, please contact Thomas Gira, Senior Vice President, Market Regulation Department **at** (240) 386-5026, Richard G. Wallace, Vice President and Chief Counsel, Market Regulation Department at (240) 386-5116, or Stephanie M. Dumont, Associate General Counsel, Office of General Counsel at (202) 728-8176.

Sincerely,



Patrice M. Gliniecki  
Vice President **and**  
Acting General Counsel