

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-49927; File No. SR-NASD-2004-093)

June 28, 2004

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the National Association of Securities Dealers, Inc. Establishing a Revised Effective Date for Amendments to the Order Audit Trail System Rules Relating to Execution Reports

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 15, 2004, 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, II, and III below, which Items have been prepared by NASD. NASD has filed this proposed rule change pursuant to Section 19(b)(3)(A)(i) of the Act<sup>3</sup> and Rule 19b-4(f)(1) thereunder,<sup>4</sup> which renders the proposal effective upon filing with 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 establish October 4, 2004 as the effective date of the amendments to NASD Rule 6954(d) approved by the Commission in April 2004.<sup>5</sup> As amended, NASD Rule 6954(d) requires members to record and report the execution price

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>4</sup> 17 CFR 240.19b-4(f)(1).

<sup>5</sup> See Securities Exchange Act Release No. 49628 (April 29, 2004), 69 FR 25651 (May 7, 2004).

and firm capacity in the Order Audit Trail System (“OATS”) Execution Reports.

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

NASD is proposing to establish October 4, 2004 as the effective date for the amendments to NASD Rule 6954(d) approved by the Commission in April 2004.<sup>6</sup> As amended, NASD Rule 6954(d) requires that members record and report the execution price and firm capacity in OATS Execution Reports. As explained in NASD’s proposed rule change SR-NASD-2004-023, the amendments to NASD Rule 6954(d) would go into effect ninety days following publication of the Notice to Members announcing Commission approval. That proposed rule change further stated that NASD would issue such Notice to Members within 60 days of Commission approval. Under this implementation schedule, NASD represents that the effective date of the new requirements would have been no later than September 27, 2004.

NASD, however, intends to include the new requirements set forth in the SR-NASD-2004-023 as part of its OATS third quarter 2004 release, which is now scheduled

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<sup>6</sup> Id.

to occur on October 4, 2004. Accordingly, NASD seeks to delay implementation of the recently approved amendments to NASD Rule 6954(d) until October 4, 2004. NASD staff believes that having the implementation date of the amendments to NASD Rule 6954(d) coincide with the OATS third quarter release, which includes other changes to OATS technical specifications, is the most cogent approach for both member firms and NASD. Among other things, the NASD believes that this approach will allow NASD to roll out the necessary systems changes in one comprehensive release, thereby resulting in fewer burdens on member firms having to comply with the revised OATS reporting requirements and ensuring that there is sufficient time for all parties to make the necessary system changes. NASD will publish a Notice to Members announcing the effective date within 5 business days of the filing of this rule change.

## 2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>7</sup> which requires, among other things, that NASD's rules must 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 also believes that the proposed rule change will enhance OATS information and will improve NASD's ability to conduct surveillance and investigations relating to compliance with NASD and other applicable rules. Furthermore, NASD believes that extending the implementation date to October 4, 2004 to coincide with OATS third quarter release, which includes other changes to OATS technical specifications, will benefit both NASD and member firms by providing adequate time to

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<sup>7</sup> 15 U.S.C. 78q-3(b)(6).

make all necessary system changes and enabling members to comply with OATS changes in a comprehensive manner.

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

NASD does not believe that the proposed rule change will impose 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 foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act<sup>8</sup> and Rule 19b-4(f)(1) thereunder,<sup>9</sup> because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule series of the NASD. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the 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.

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<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(i).

<sup>9</sup> 17 CFR 240.19b-4(f)(1).

#### 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](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2004-093 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-NASD-2004-093. 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 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-2004-093 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.<sup>10</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).