

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55745; File No. SR-NASD-2007-030)

May 11, 2007

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Trade Reporting Obligations for Transactions in Foreign Equity Securities

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 April 20, 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, II, and III below, which Items have been substantially 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 a new paragraph (g) to Rule 6620 to codify a member’s trade reporting obligations with respect to transactions in foreign equity securities. 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 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(i).

⁴ 17 CFR 240.19b-4(f)(1).

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6600. OVER-THE-COUNTER EQUITY SECURITIES

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6620. Transaction Reporting

(a) through (f) No change.

(g) Transactions in Foreign Equity Securities

(1) For purposes of this paragraph, the term “foreign equity security” means any OTC Equity Security that is issued by a corporation or other entity incorporated or organized under the laws of any foreign country.

(2) Transactions in foreign equity securities shall be reported to the OTC Reporting Facility unless:

(A) the transaction is executed on and reported to a foreign securities exchange; or

(B) the transaction is executed over the counter in a foreign country and is reported to the regulator of securities markets for that country.

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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

The purpose of the proposed rule change is to codify existing NASD guidance regarding an NASD member’s trade reporting obligations in transactions involving foreign equity securities.

NASD Rule 6620 requires members to transmit to the OTC Reporting Facility last sale reports of transactions in OTC Equity Securities. For purposes of a member’s trade reporting obligations under Rule 6620, an OTC Equity Security is “any non-exchange-listed security and certain exchange-listed securities that do not otherwise qualify for real-time trade reporting.”⁵ This broad definition of OTC Equity Security, by its terms, would include foreign equity securities that are not listed on a U.S. securities exchange and that trade exclusively in foreign markets.

The proposed rule filing would codify the long-held interpretive position taken by NASD that transactions in foreign equity securities⁶ are not subject to the trade reporting requirements if (1) the transaction is executed on and reported to a foreign securities exchange or (2) the transaction is executed over the counter in a foreign country and is reported to the regulator of securities markets for that country.⁷ Transactions in foreign equity securities that are not

⁵ See NASD Rule 6610(d).

⁶ The proposed rule change defines “foreign equity security” as any OTC Equity Security that is issued by a corporation or other entity incorporated or organized under the laws of any foreign country.

⁷ This position was originally taken with respect to the end-of-day reporting requirements of non-Nasdaq, over-the-counter securities under former Schedule H to NASD’s By-Laws. See NASD Notice to Members 90-58 (September 1990). It was reaffirmed when

reported to a foreign securities exchange or, if executed over the counter in a foreign country, to a foreign securities regulator, must be reported to NASD.⁸ Although many members are aware of and continue to rely on this guidance, NASD recently has received a number of inquiries relating to foreign equity trade reporting requirements. To ensure that all members are aware of their trade reporting obligations regarding foreign equity securities, NASD is proposing to codify this guidance so that, going forward, the rules themselves specifically address foreign equity securities.⁹

NASD has filed the proposed rule change for immediate effectiveness. The effective date and the implementation date will be the date of filing, April 20, 2007.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section

end-of-day reporting was changed to 90-second transaction reporting. See OTC Bulletin Board Update (December 1993).

⁸ It is important to note, however, that separate legs of a riskless principal transaction may be subject to different reporting requirements. For example, if a member executes a transaction in a foreign equity security for a customer on a foreign exchange on a riskless principal basis, with the initial leg reported by the foreign exchange, the member would not be required to report that leg of the riskless principal transaction to NASD. However, the second leg (i.e., the transaction between the member and the customer) would have to be reported to NASD on a non-tape basis.

⁹ NASD also notes that trades reported in the U.S. must be reported in U.S. dollars, regardless of the currency in which the trade occurred. The methodology employed by the member for currency conversion is left to the NASD member; however, the member should document its practice and employ the same method consistently. See OTC Bulletin Board Update (December 1993) and Notice to Members 90-58 (September 1990). See also Notice to Members 06-70, at note 5 (December 2006) (noting that, for purposes of reporting to the Order Audit Trail System, members are “permitted to use reasonable business practices for the [currency] conversion; however, members should document their practice regarding currency conversion and should be consistent in their methodology”).

15A(b)(6) of the Act,¹⁰ which requires, among other things, that NASD 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 believes that the proposed rule change provides needed clarification to NASD members regarding their trade reporting obligations with respect to foreign equity securities.

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

Written comments were neither solicited nor received.

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 thereunder¹¹ because the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of NASD. 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.

¹⁰ 15 U.S.C. 78o-3(b)(6).

¹¹ 17 CFR 240.19b-4.

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-2007-030 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.

All submissions should refer to File Number SR-NASD-2007-030. 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-2007-030 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.¹²

Florence E. Harmon
Deputy Secretary

¹² 17 CFR 200.30-3(a)(12).