SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-56003; File No. SR-NASD-2007-028)

July 2, 2007

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order
Approving Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to the
Order Audit Trail System

On April 17, 2007, the National Association of Securities Dealers, Inc. ("NASD") filed

with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of

the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule

change to amend Rules 6951 and 6954 to require members that transmit an intermarket sweep

order ("ISO") to another member, electronic communications network, nonmember, or exchange

to record and report the fact that the order was an ISO. On May 18, 2007, NASD filed

Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was

published for comment in the Federal Register on May 31, 2007.[3] The Commission received no

comment letters on the proposal. This order approves the proposed rule change, as modified by

Amendment No. 1.

The Commission finds that the proposed rule change is consistent with the requirements

of the Act and the rules and regulations thereunder applicable to NASD,[4] and, in particular,

Section 15A(b)(6) of the Act[5] which requires, among other things, that NASD rules be designed

to prevent fraudulent and manipulative acts and practices, to promote just and equitable

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[1]   15 U.S.C. 78s(b)(1).

[2]   17 CFR 240.19b-4.

[3]   See Securities Exchange Act Release No. 55806 (May 23, 2007), 72 FR 30406 (the
        "Notice").

[4]   In approving this proposed rule change, the Commission has considered the proposed
        rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5]   15 U.S.C. 78o-3(b)(6).

principles of trade, to foster cooperation and coordination with persons engaged in regulating

transactions in securities, to remove impediments to and perfect the mechanism of a free and

open market and a national market system and, in general, to protect investors and the public

interest.

On June 9, 2005, the Commission adopted Regulation NMS,[6] which among other things,

adopted an Order Protection Rule[7] that requires trading centers to establish, maintain, and

enforce policies and procedures designed to prevent the execution of trades at prices inferior to

protected quotations displayed by automated trading centers, subject to applicable exceptions.

One of the exceptions from the Order Protection Rule is when the transaction that constitutes a

trade-through[8] is "effected by a trading center that simultaneously routed an intermarket sweep

order to execute against the full displayed size of any protected quotation in the NMS stock that

was traded through." [9]

The purpose of the proposed rule change is to require member firms to record the fact

that an order in an OATS-eligible security is an ISO when the member routes an ISO to another

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[6]   See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[7]   17 CFR 242.611.

[8]   A "trade-through" is "the purchase or sale of an NMS stock during regular trading hours, either as principal or agent, at a price that is lower than a protected bid or higher than a protected offer." See 17 CFR 242.600(b)(77).

[9]   See 17 CFR 242.611(b)(6). The phrase "intermarket sweep order" is defined as "a limit order for an NMS stock that meets the following requirements: (i) When routed to a trading center, the limit order is identified as an intermarket sweep order; and (ii) Simultaneously with the routing of the limit order identified as an intermarket sweep order, one or more additional limit orders, as necessary, are routed to execute against the full displayed size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected offer, in the case of a limit order to buy, for the NMS stock with a price that is superior to the limit price of the limit order identified as an intermarket sweep order. These additional routed orders must also be marked as intermarket sweep orders." The proposed rule change adopts this same definition of intermarket sweep order for purposes of the OATS Rules. See 17 CFR 242.600(b)(30).

member or non-member. The member would be required to include this information in the

Route Report it submits to NASD pursuant to the OATS Rules.[10] This requirement should

ensure that NASD knows that the order was an ISO and can utilize that information when

reviewing audit trails.[11]

The Commission believes that the proposed rule change is consistent with the Act and

should enhance OATS data and help ensure that the NASD is able to more effectively monitor

compliance with Regulation NMS.

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[10]   When a member transmits an order in an OATS-eligible security to another member, electronic communications network, non-member, or exchange for handling or execution, the routing member is required to submit a Route Report to NASD. The categories of information that a member must include in a Route Report are set forth in NASD Rule 6954(c) and in the OATS Reporting Technical Specifications published by NASD.

[11]   As discussed in the Notice, firms will not be required to begin using the ISO routing method code on Route Reports until February 4, 2008, but the code will be available for use by firms immediately on approval. Firms are encouraged to use the ISO code as soon as possible to facilitate NASD's ability to determine whether the trade was made in reliance on an ISO exception from the Order Protection Rule.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act[12], that the proposed rule change (File No. SR-NASD-2007-028), as amended, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Florence E. Harmon
Deputy Secretary

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[12]   15 U.S.C. 78s(b)(2).

[13]   17 CFR 200.30-3(a)(12).