

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-54702; File No. SR-NASD-2006-121)

November 3, 2006

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend NASD Rule 11890(b)(2) to Allow NASD to Designate Officers to Take Action Under the Rule With Respect to Clearly Erroneous Transactions

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 October 30, 2006, 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 and II below, which Items have been prepared by NASD. NASD has designated the proposed rule change as constituting a “non-controversial” rule change under Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ 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 amend NASD Rule 11890 (Clearly Erroneous Transactions) to allow any NASD officer designated by an Executive Vice President of NASD’s Market Regulation Department or an Executive Vice President of NASD’s Transparency Services Department to, on his or her own motion, review any transaction in a Nasdaq-listed security or an OTC equity security, as defined in NASD Rule 6610, arising out of or reported through any

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

quotation, communication, or trade reporting system owned or operated by NASD or its subsidiaries. The text of the proposed rule change is available on NASD's Web site (www.nasd.com), at the NASD's Office of the Secretary, and at the Commission's Public Reference Room.

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

Currently, NASD Rule 11890(b)(2) provides that, in the event of (1) a disruption or malfunction in the use or operation of any quotation, communication, or trade reporting system owned or operated by NASD or its subsidiaries and approved by the Commission, or (2) extraordinary market conditions in which the nullification or modification of transactions may be necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest, an Executive Vice President of NASD's Market Regulation Department or an Executive Vice President of NASD's Transparency Services Department may, on his or her own motion, review any transaction in a Nasdaq-listed security or an OTC equity security, as defined

in NASD Rule 6610, arising out of or reported through any such quotation, communication, or trade reporting system.⁵

On October 1, 2005, NASD assumed direct authority for OTC equities operations, in place of a prior delegation to Nasdaq.⁶ At that time, NASD amended NASD Rule 11890(b)(2) to provide NASD (rather than Nasdaq) with the authority to declare, on its own motion, clearly erroneous transactions in OTC equity securities (e.g., OTCBB and Pink Sheets securities) in the event of a disruption or malfunction in the use of an NASD system or due to extraordinary market conditions. Additionally, NASD amended NASD Rule 11890(b)(2) to provide NASD with similar clearly erroneous authority with respect to all transactions in Nasdaq-listed securities reported to NASD.⁷ Thus, NASD Rule 11890(b)(2) also provides NASD with the authority to declare, on its own motion, clearly erroneous transactions in Nasdaq-listed securities reported to NASD's Alternative Display Facility or an NASD Trade Reporting Facility⁸ in the event of a disruption or malfunction in the use of an NASD system or due to extraordinary

⁵ NASD has filed a proposed rule change that would (1) renumber NASD Rule 11890(b)(2) as Rule 11890(a) and rename it as "Procedures for Reviewing Transactions on NASD's Own Motion;" and (2) expand the scope of the rule to transactions in all securities by deleting the reference to Nasdaq-listed and OTC equity securities. See Securities Exchange Act Release No. 54451 (September 15, 2006), 71 FR 55243 (September 21, 2006) (notice of filing of SR-NASD-2006-104).

⁶ See Securities Exchange Act Release No. 52508 (September 26, 2005), 70 FR 57346 (September 30, 2005) (order approving SR-NASD-2005-089).

⁷ See Securities Exchange Act Release No. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006) (order approving SR-NASD-2005-087). Prior to these amendments, such authority was delegated to Nasdaq with respect to trades reported through Nasdaq's Automated Confirmation Transaction (ACT) Service and there was no such authority with respect to trades reported to NASD's Alternative Display Facility.

⁸ See Securities Exchange Act Release Nos. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006) (order approving SR-NASD-2005-087 relating to the NASD/Nasdaq Trade Reporting Facility); 54479 (September 21, 2006), 71 FR 56573 (September 27, 2006) (notice of filing of SR-NASD-2006-108 relating to the proposed NASD/National Stock Exchange Trade Reporting Facility); and 54591 (October 12, 2006), 71 FR 61519 (October 18, 2006) (notice of filing of SR-NASD-2006-115 relating to the proposed NASD/Boston Stock Exchange Trade Reporting Facility).

market conditions.

By its terms, NASD Rule 11890(b)(2) authorizes an Executive Vice President of NASD's Market Regulation Department or an Executive Vice President of NASD's Transparency Services Department to take action with respect to clearly erroneous transactions. Currently, NASD has one Executive Vice President of Market Regulation, and one Executive Vice President of Transparency Services. NASD is proposing to amend NASD Rule 11890(b)(2) to provide that an Executive Vice President of NASD's Market Regulation Department or an Executive Vice President of NASD's Transparency Services Department may also designate any NASD officer (i.e., an NASD employee with the title of Vice President or above) to take action under this Rule. NASD believes that such designation is consistent with current NASD Rules 11890(a)(1) and (b)(1), which authorize officers of Nasdaq designated by its President, or any Executive Vice President of Nasdaq designated by its President, respectively, to act under the Rule.

NASD applies this authority in only very limited circumstances, for example, where there is an extraordinary event and multiple self-regulatory organizations are canceling or modifying trades. However, since implementation of the aforementioned rule changes, it has become apparent to NASD that having just two NASD officers authorized to act under the Rule is insufficient to review and consider promptly potential clearly erroneous transactions as they arise. For example, if the Executive Vice President of Market Regulation and Executive Vice President of Transparency Services are unreachable at the same time because they are in meetings or on travel or out of the office for any other reason, potential clearly erroneous transactions cannot be reviewed in a timely manner. NASD staff believes that delays in

reviewing these transactions should be avoided and the proposed rule change will allow NASD to take prompt and effective action with respect to clearly erroneous trades.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁹ which requires, among other things, that NASD rules 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 will lessen the impact of clearly erroneous transactions on the market and the public by allowing NASD to empower designated NASD officers with the authority to take prompt action with respect to such transactions.

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 by NASD.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the

⁹ 15 U.S.C. 78o-3(b)(6).

Act and Rule 19b-4(f)(6) thereunder.¹⁰ In accordance with Rule 19b-4(f)(6)(iii),¹¹ NASD provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change.

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative for 30 days after the date of its filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. NASD has requested that the Commission waive the 30-day operative delay based upon a representation that the requested waiver is necessary to enable NASD to take prompt and effective action with respect to clearly erroneous transactions as they arise. NASD noted that there have been instances where the review of potential clearly erroneous transactions has been delayed because both Executive Vice Presidents authorized under the Rule have been unreachable. NASD wishes to remedy this situation as quickly as possible. In light of the foregoing, the Commission believes that such waiver is consistent with the protection of investors and the public interest. Accordingly, the Commission designates the proposal to be effective and operative upon filing with the Commission.¹²

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

¹⁰ 15 U.S.C. 78s(b)(3)(A) and 17 CFR 240.19b-4(f)(6), respectively.

¹¹ 17 CFR 240.19b-4(f)(6)(iii).

¹² For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

furtherance of the purposes of the Act.

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-2006-121 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-2006-121. 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 such 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-2006-121 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.¹³

Nancy M. Morris
Secretary

¹³ 17 CFR 200.30-3(a)(12).