

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-53748; File No. SR-NASD-2006-055)

May 2, 2006

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of a Proposed Rule Change to Require Members to Report All Transactions that Must Be Reported to NASD and Are Subject to a Regulatory Transaction Fee to the Nasdaq Market Center and/or the Trade Reporting and Comparison Service

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 21, 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, II, and III below, which Items have been prepared by NASD. 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 Section 3 of Schedule A to the NASD By-Laws (“Section 3”), to require members to report all transactions that must be reported to NASD and that are subject to a regulatory transaction fee pursuant to Section 3 to the Nasdaq Market Center (“NMC”) and/or the Trade Reporting and Comparison Service (“TRACS”). In addition, NASD is proposing new provisions in NASD Rules 6130 and 6130A that would expressly require members to report odd-lot transactions, away from the market sales, and OTC options with special indicators denoting that such transactions are reported in accordance with Section 3.

The text of the proposed rule change is available on NASD’s Web site (<http://www.nasd.com>), from NASD’s principal office, and at the Commission’s Public

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Reference Room. The text of the proposed rule change also appears below. Proposed new language is underlined; proposed deletions are in brackets.³

SCHEDULE A TO NASD BY-LAWS

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Section 3 — Regulatory Transaction Fee

Each member shall be assessed a regulatory transaction fee. The amount shall be determined periodically in accordance with Section 31 of the Act. Transactions assessable under this Section 3 that must be reported to NASD shall be reported in an automated manner.

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4000. THE NASDAQ STOCK MARKET

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4600. NASDAQ MARKET MAKER REQUIREMENTS

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4630. Reporting Transactions in Nasdaq National Market Securities

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4632. Transaction Reporting

(a) through (d) No Change.

(e) Transactions Not [Required] To Be Reported For Publication Purposes

The following types of transactions shall not be reported for publication purposes:

³ NASD has filed another proposed rule change, SR-NASD-2005-087, which, among other things, proposed a new Trade Reporting Facility. If this filing is approved prior to that filing, the Trade Reporting Facility rules would be amended to make conforming changes with this proposal. However, if SR-NASD-2005-087 is approved prior to the approval of this filing, this filing will be amended to make conforming changes with the Trade Reporting Facility rules.

(1) through (6) No Change.

(f) through (g) No Change.

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4640. Reporting Transactions in Nasdaq Capital Market Securities

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4642. Transaction Reporting

(a) through (d) No Change.

(e) Transactions Not [Required] To Be Reported For Publication Purposes

The following types of transactions shall not be reported for publication purposes:

(1) through (5) No Change.

(f) through (g) No Change.

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4000A. NASD ALTERNATIVE DISPLAY FACILITY

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4600A. TRADING IN NASDAQ SECURITIES

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4632A. Transactions Reported by Members

(a) through (j) No Change.

(k) Transactions Not To Be Reported To NASD For Publication Purposes

The following types of transactions effected by NASD members shall not be reported to TRACS for publication purposes:

(1) through (5) No Change.

(l) No Change.

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6000. NASD SYSTEMS AND PROGRAMS**6100. TRADE REPORTING SERVICE**

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6130. Trade Report Input

(a) through (f) No Change.

(g) Reporting Certain Transactions for Purposes of Regulatory Transaction Fee**Assessment**

The following types of transactions that are assessed a regulatory transaction fee in accordance with Section 3 of Schedule A to the NASD By-Laws must be reported to the Nasdaq Market Center as prescribed below. Transactions must be submitted to the Nasdaq Market Center by 6:30 p.m. Eastern Time (or the end of the Nasdaq Market Center reporting session that is in effect at that time).

(1) Odd-Lot Transactions

Transactions for less than a normal unit of trading shall be reported to the Nasdaq Market Center with a modifier of .RO to designate the transaction as submitted for purposes of the regulatory transaction fee under Section 3 of Schedule A to the NASD By-Laws. Transactions may be entered as clearing or non-clearing.

(2) Away From the Market Sales

Transactions where the buyer and seller have agreed to trade at a price substantially unrelated to the current market for the security, and consideration is given, shall be reported to the Nasdaq Market Center with a modifier of .RA to designate the transaction as submitted for purposes of the regulatory transaction fee under Section 3 of

Schedule A to the NASD By-Laws. Transactions may be entered as clearing or non-clearing.

(3) Exercises of OTC Options

Transactions effected pursuant to the exercise of an OTC option shall be reported to the Nasdaq Market Center with a modifier of .RX to designate the transaction as submitted for purposes of the regulatory transaction fee under Section 3 of Schedule A to the NASD By-Laws. Transactions may be entered as clearing or non-clearing.

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6400.REPORTING TRANSACTIONS IN LISTED SECURITIES

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6420. Transaction Reporting

(a) through (d) No Change.

(e) Transactions Not [Required] To Be Reported For Publication Purposes

The following types of transactions shall not be reported for inclusion on the Consolidated Tape:

(1) through (8) No Change.

(f) No Change.

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6620. Transaction Reporting

(a) through (d) No Change.

(e) Transactions Not [Required] To Be Reported For Publication Purposes

The following types of transactions shall not be reported for publication purposes:

(1) through (4) No Change.

(f) No Change.

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6000A. NASD ADF SYSTEMS AND PROGRAMS

6100A. TRACS TRADE COMPARISON SERVICE

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6130A. Trade Report Input

(a) through (b) No Change.

(c) Reporting Certain Transactions for Purposes of Regulatory Transaction Fee

Assessment

The following types of transactions that are assessed a regulatory transaction fee in accordance with Section 3 of Schedule A to the NASD By-Laws must be reported to TRACS as prescribed below. Transactions must be submitted to TRACS by 6:30 p.m. Eastern Time (or the end of the TRACS reporting session that is in effect at that time).

(1) Odd-Lot Transactions

Transactions for less than a normal unit of trading shall be reported to TRACS with a modifier of .RO to designate the transaction as submitted for purposes of the regulatory transaction fee under Section 3 of Schedule A to the NASD By-Laws.

Transactions may be entered as clearing or non-clearing.

(2) Away From the Market Sales

Transactions where the buyer and seller have agreed to trade at a price substantially unrelated to the current market for the security, and consideration is given, shall be reported to TRACS with a modifier of .RA to designate the transaction as

submitted for purposes of the regulatory transaction fee under Section 3 of Schedule A to the NASD By-Laws. Transactions may be entered as clearing or non-clearing.

(3) Exercises of OTC Options

Transactions effected pursuant to the exercise of an OTC option shall be reported to TRACS with a modifier of .RX to designate the transaction as submitted for purposes of the regulatory transaction fee under Section 3 of Schedule A to the NASD By-Laws. Transactions may be entered as clearing or non-clearing.

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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

Pursuant to Section 31 of the Act,⁴ NASD and the national securities exchanges are required to pay transaction fees and assessments to the Commission that are designed to recover the costs related to the government's supervision and regulation of the securities markets and securities professionals. NASD obtains funds to pay its Section 31 fees and assessments from its membership, in accordance with Section 3. Currently, most of the transactions that are

⁴ 15 U.S.C. 78ee.

assessable under Section 3 are reported to NASD through automated facilities, because most transactions must be reported to NMC or TRACS pursuant to NASD trade reporting rules. NASD is able to use the transaction data reported to NMC and TRACS for Section 3 billing purposes. Member firms, however, are currently required to manually self-report covered sales of odd-lots, away from the market sales, and exercises of OTC options because these transactions are not otherwise required to be reported to NMC or TRACS.

To improve NASD's programs related to compliance with Section 31 of the Act and Rule 31 thereunder,⁵ NASD is proposing to require NASD member firms to report all covered sales that must be reported to NASD and that are assessed under Section 3 in an automated manner. While the current manual self-reporting process has allowed NASD to meet its obligations under Section 31 of the Act, there have been instances when some members filed their self-reporting form late or amended previous forms in later months to include additional covered sales volume. NASD believes that requiring automated reporting of such covered sales would facilitate efficient, accurate, and timely reporting. Automated reporting would also reduce the burden on members that results from manually reporting certain transactions to NASD. In addition, the mandatory reporting of odd-lots and other transactions would enhance the regulatory audit trail while not providing distortive information to the publicly disseminated tape.

To fully automate NASD's procedures for assessing the regulatory transaction fee, NASD is proposing to amend: (1) Section 3 to create an affirmative obligation to report, in an automated manner, all covered sales that must be reported to NASD for purposes of Section 3; (2) NASD Rules 6130 and 6130A to require that members report all transactions reportable to NASD and subject to the regulatory transaction fee pursuant to Section 3 to NMC or TRACS and

⁵ 17 CFR 240.31.

to identify certain transactions submitted specifically for a regulatory transaction fee assessment with a special indicator denoting their purpose;⁶ and (3) NASD Rules 4632, 4642, 4632A, 6420, and 6620 governing trade reporting that currently prohibit member firms from reporting odd-lot transactions, away from the market sales, and OTC options, as well as other identified transactions, to clarify that the prohibition found in the transaction reporting rules is limited to the submission of a transaction for publication purposes.⁷

NASD will announce the effective date of the proposed rule change in a Notice to Members to be published no later than 60 days following Commission approval, if the Commission approves this proposal. The effective date would be at least 90 days following publication of the Notice to Members announcing Commission approval to allow firms sufficient time to make any necessary systems changes.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁸ 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

⁶ NASD proposes to use the following modifiers for purposes of reporting to the NMC or TRACS certain transaction that are subject to the regulatory transaction fee under Section 3: (1) .RO to designate odd-lot transactions; (2) .RA to designate transactions where the buyer and seller have agreed to trade at a price substantially unrelated to the current market for the security; and (3) .RX to designate transactions effected pursuant to the exercise of an OTC option.

⁷ The proposed amendments to NASD Rules 4632A and 6420 solely amend the headings of NASD Rules 4632A(k) and 6420(e), respectively. The text of these rules does not need to be amended because it already stated that the prohibition on reporting the identified transactions is limited to the submission of a transaction for publication purposes (or in the case of listed securities, for inclusion on the Consolidated Tape).

⁸ 15 U.S.C. 78q-3(b)(6).

requiring members to report, in an automated manner, all transactions that must be reported to NASD and are subject to the regulatory transaction fee would ensure more accurate and timely reporting of such transactions and would reduce the burden on members that results from manually reporting certain transactions.

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

NASD does not believe that the proposed rule change would 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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- A. by order approve such proposed rule change; or
- B. institute proceedings to determine whether the proposed rule change should be disapproved.

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-2006-055 on the subject line.

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASD-2006-055. 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-2006-055 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.⁹

Nancy M. Morris
Secretary

⁹ 17 CFR 200.30-3(a)(12).