

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-54318; File No. SR-NASD-2006-098)

August 15, 2006

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Make Certain Technical, Non-Substantive Changes to its Trade Reporting Rules

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 August 10, 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. NASD has designated the proposed rule change as constituting a “non-controversial” rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) 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 make technical, non-substantive changes to certain NASD rules previously approved by the Commission in SR-NASD-2006-055 that were amended by SR-

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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).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

NASD-2005-087, which became effective August 1, 2006.<sup>5</sup> Below is the text of the proposed rule change.<sup>6</sup> Proposed new language is underlined; proposed deletions are in [brackets].

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**4000. THE [NASDAQ STOCK MARKET] TRADE REPORTING FACILITY**

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**[4600. NASDAQ MARKET MAKER REQUIREMENTS]**

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**4630. Reporting Transactions in Designated [Nasdaq National Market] Securities**

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**4632. Transaction Reporting**

(a) through (d) No Change.

**(e) Transactions Not To Be Reported For Publication Purposes**

The following types of transactions shall not be reported to the Trade Reporting Facility for publication purposes:

(1) through (6) No Change.

(f) through (g) No Change.

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**4640 Series.** Deleted in its entirety

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<sup>5</sup> NASD filed SR-NASD-2005-087 on July 11, 2005 and Amendment No. 1 on June 15, 2006. The Commission approved SR-NASD-2005-087, as amended, on June 30, 2006. See Securities Exchange Act Release No. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006).

<sup>6</sup> The proposed changes indicated below are based on the rule text approved by the Commission as part of SR-NASD-2006-055 on June 12, 2006, which, but for this subsequent filing (which became necessary due to the intervening approval and implementation of SR-NASD-2005-087), would become effective on December 1, 2006.

**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 (4) No Change.

(5) purchases or sales of securities effected upon the exercise of an option pursuant to the terms thereof or the exercise of any other right to acquire securities at a pre-established consideration unrelated to the current market[.]; and

(6) transactions reported on or through an exchange.

(l) No Change.

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**6000. NASD SYSTEMS AND PROGRAMS**

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**6100. CLEARING AND COMPARISON RULES [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]System as prescribed below. Transactions must be submitted to the [Nasdaq Market Center]System by 6:30 p.m. Eastern Time (or the end of the [Nasdaq Market Center]System 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]System 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]System 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]System 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

On June 30, 2006, the Commission approved SR-NASD-2005-087.<sup>7</sup> Among other things, SR-NASD-2005-087 proposed (1) amendments to the NASD Delegation Plan, NASD By-Laws, and NASD rules to reflect a proposed phased implementation strategy for the operation of the Nasdaq Exchange as a national securities exchange with respect to Nasdaq-listed securities during a transitional period; and (2) rules for reporting transactions effected otherwise than on an exchange to the new Trade Reporting Facility. SR-NASD-2005-087 became effective on August 1, 2006.

On June 12, 2006, the Commission approved SR-NASD-2006-055 which requires members to report all transactions that must be reported to NASD and that are subject to a regulatory transaction fee pursuant to Section 3 of Schedule A to the NASD By-Laws to the

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<sup>7</sup> See Securities Exchange Act Release No. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006).

Nasdaq Market Center and/or the Trade Reporting and Comparison Service; provided, however, that certain identified transactions shall not be reported for publication purposes.<sup>8</sup> SR-NASD-2006-055 will become effective on a date to be announced in a future Notice to Members, which is anticipated to be December 1, 2006.

These two rule filings amended several of the same NASD rules. Because of the timing of the approval and implementation dates of these two filings, NASD is filing this proposed rule change to make technical, non-substantive changes to those NASD rules previously approved by the Commission but not yet effective in SR-NASD-2006-055 that were subsequently amended by the approval and implementation of SR-NASD-2005-087, which became effective on August 1, 2006.

Specifically, the underlying rule text for NASD Rules 4632, 4632A, and 6130 contained in SR-NASD-2006-055 was subsequently amended by SR-NASD-2005-087.<sup>9</sup> In addition, in light of the changes implemented as part of SR-NASD-2005-087, the transactions that are subject to a regulatory transaction fee pursuant to Section 3 of Schedule A to NASD By-Laws will no longer be reported to the Nasdaq Market Center as originally proposed in NASD Rule 6120(g), but to another NASD facility, either the Trade Reporting Facility or the OTC Reporting Facility, as defined in NASD Rule 6110. As a result, NASD is proposing changes to the rule text approved pursuant to SR-NASD-2006-055 to conform it to the recently approved rule changes as part of SR-NASD-2005-087. In addition, SR-NASD-2006-055 proposed amendments to NASD

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<sup>8</sup> See Securities Exchange Act Release No. 53977 (June 12, 2006), 71 FR 34976 (June 16, 2006) (approving SR-NASD-2006-055).

<sup>9</sup> The amendments to Section 3 of Schedule A to NASD By-Laws and NASD Rules 6420, 6620, and 6130A were unaffected by SR-NASD-2005-087. Accordingly, these amendments will become effective in accordance with SR-NASD-2006-055 and the corresponding Notice to Members that will announce the effective date of the amendments, which is anticipated to be December 1, 2006.

Rule 4642, which was subsequently deleted in SR-NASD-2005-087, and therefore these rule changes are no longer necessary.

NASD has filed the proposed rule change for immediate effectiveness. The implementation date will be the implementation date of SR-NASD-2006-055, which is anticipated to be December 1, 2006.

## 2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>10</sup> 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 will enhance the integrity of the market by increasing the consistency and clarity of its rules.

### 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

Because the foregoing proposed rule change does not: (1) significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public

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<sup>10</sup> 15 U.S.C. 78q-3(b)(6).

interest, provided that the Exchange has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposal.<sup>11</sup>

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.

#### 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-2006-098 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-2006-098. 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

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<sup>11</sup> As required under Rule 19b-4(f)(6)(iii), NASD provided the Commission with notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposal.

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 the 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-2006-098 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>12</sup>

Nancy M. Morris  
Secretary

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