

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-54353; File No. SR-NASD-2006-090)

August 23, 2006

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Regarding Fees and Credits for the NASD/Nasdaq Trade Reporting Facility and To Adopt a Transaction Credit Program for Securities Listed on the Nasdaq Stock Market

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 July 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 and II below, which Items have been prepared by NASD. On August 7, 2006, NASD amended the proposed rule change.³ NASD again amended the proposed rule change on August 14, 2006.⁴ NASD filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act⁵ and Rule 19b-4(f)(6) thereunder,⁶ which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Amendment No. 1. Amendment No. 1 made clarifying changes to the proposed rule change.

⁴ See Amendment No. 2. Amendment No. 2 made clarifying changes to the proposed rule change. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on August 14, 2006, the day NASD filed Amendment No. 2. NASD provided the Commission with written notice of its intention to file the proposed rule change on July 13, 2006. See Section 19(b)(3)(A) of the Act, and Rule 19b-4(f)(6)(iii) thereunder. 15 U.S.C. 78s(b)(3)(A), 17 CFR 240.19b-4(f)(6)(iii).

⁵ 15 U.S.C. 78s(b)(3)(A).

⁶ 17 CFR 240.19b-(f)(6).

proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD proposes to adopt a new NASD Rule 7000B Series relating to fees and credits for The Trade Reporting Facility LLC (“NASD/Nasdaq TRF”) established by NASD and The Nasdaq Stock Market, Inc. (“Nasdaq”). NASD filed the proposed rule change for immediate effectiveness. NASD proposes that the proposed rule change will be effective with respect to Nasdaq-listed securities as of August 1, 2006, the day on which the NASD/Nasdaq TRF commenced operating with respect to such securities. NASD proposes to implement the proposed rule change with respect to non-Nasdaq exchange-listed securities when the NASD/Nasdaq TRF receives Commission approval and commences operation with respect to such securities.

The text of the proposed rule change is available at the Commission’s Public Reference Room, at NASD, and on the NASD Web site at www.nasd.com.

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

NASD proposes to adopt a new NASD Rule 7000B Series relating to fees and credits applicable to the NASD/Nasdaq TRF, which was recently approved by the Commission for collecting over-the-counter trade reports in Nasdaq-listed securities.⁷ In accordance with NASD policy regarding the NASD/Nasdaq TRF and other trade reporting facilities that NASD may establish with other registered national securities exchanges, the fees and credits reflected in the proposal have been developed and approved by the officers and the Board of Directors of the NASD/Nasdaq TRF, and have also been reviewed and approved by NASD staff and the NASD Board as consistent, in the view of the NASD, with the requirements of the Act.

The fee schedule set forth in proposed new Rule 7002B is identical to Nasdaq's current fee schedule for its Automated Confirmation Transaction ("ACT") system contained in NASD Rule 7010(g) (Nasdaq Market Center Trade Reporting). Under the proposed fee schedule, reporting of trades that do not use the NASD/Nasdaq TRF's comparison functionality (*i.e.*, "locked-in trades") in Nasdaq-listed securities is free. Reporting of locked-in trades in other securities will be subject to a charge of \$0.029 per side, but market participants reporting an average daily volume of more than 5000 trades per day in stocks reported to the Consolidated Tape Association ("CTA") during a month will pay the charge only for a number of trades equal to 5000 times the number of trading days in the month. Under proposed Rule 7003B, which is identical to current NASD Rule 7020 (Aggregation of Activity of Affiliated Members), affiliated members using the

⁷ See Securities Exchange Act Release No. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006)(SR-NASD-2005-087). NASD intends to file an additional proposed rule change to allow the NASD/Nasdaq TRF to collect trade reports for non-Nasdaq exchange-listed securities.

NASD/Nasdaq TRF may aggregate their activity for purposes of determining eligibility for this volume based-discount.

The comparison charge in proposed Rule 7002B is \$0.0144 per side per 100 shares, with a minimum charge of 400 shares and a maximum charge of 7,500 shares. The Late Report fee is \$0.288 per side, the Query charge is \$0.50 per query, and the Corrective Transaction Charge is \$0.25, paid by the reporting party or both parties, depending on the nature of the correction. The NASD/Nasdaq TRF will assess a compounding late charge of 1-1/2% per month for fees past due 45 days or more.

In addition, NASD is proposing to adopt a transaction credit program under proposed NASD Rule 7001B with respect to trades reported to the NASD/Nasdaq TRF that would allow participants to share market data revenue associated with trades in stocks listed on the New York Stock Exchange (“Tape A”) and the American Stock Exchange (“Tape B”). Under the program, NASD members reporting trades in those stocks to the NASD/Nasdaq TRF will receive 50% of the market data revenue earned by the NASD/Nasdaq TRF with respect to those trade reports, after deducting any amounts that the NASD/Nasdaq TRF will be required to pay to the CTA for capacity usage. The credits are paid on a quarterly basis. The proposed transaction credit program is identical to Nasdaq’s current transaction credit program for Tape A and Tape B stocks pursuant to NASD Rule 7010(b)(2) (Exchange-Listed Securities Transaction Credit).

NASD is also proposing to adopt under new Rule 7001B an equivalent transaction credit program for securities listed on the Nasdaq Stock Market (“Tape C”). The proposed program for Tape C stocks is not identical to the existing Tape A and B programs because there is a difference in the manner in which the underlying Tape A and

Tape B revenue versus Tape C revenue is distributed to NASD and the exchanges. Tape A and Tape B revenue is currently distributed to NASD and exchanges based on the number of trades reported, while Tape C revenue is distributed based on an average of number of trades and number of shares reported. There is no difference, however, in the manner in which members will share in Tape A and B revenue versus Tape C revenue because the proposed rule language bases the credits on the pro rata share of revenue attributable to a member's trade reports. Thus, a member will receive 50% of the revenue attributable to its trade reports in each of the three tapes. The proposed transaction credit program for Tape C stocks is identical to the National Stock Exchange's ("NSX") existing Tape C program. The NSX's program provides a 50% transaction credit on revenue generated by transactions in Tape C securities and is allocated to members on a pro rata basis based upon the Tape C revenue generated by such member.⁸

NASD has filed the proposed rule change for immediate effectiveness. NASD proposes that the proposed rule change, with respect to Nasdaq-listed securities, will be implemented as of August 1, 2006, the day on which the NASD/Nasdaq TRF commenced operating with respect to such securities. NASD proposes to implement the proposed rule change with respect to non-Nasdaq exchange-listed securities when the NASD/Nasdaq TRF receives Commission approval and commences operation with respect to such securities.

2. Statutory Basis

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

⁸ See Securities Exchange Act Release No. 53860 (May 24, 2006), 71 FR 31250 (June 1, 2006)(SR-NSX-2006-07).

Section 15A of the Act,⁹ in general, and with Section 15A(b)(5) of the Act,¹⁰ in particular, which requires, among other things, that NASD rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that NASD operates or controls. NASD believes that the proposed rule change is a reasonable and equitable fee and credit structure in that the proposed fees are identical to pre-existing fees established by Nasdaq during its operation as a facility of NASD and the credits are identical to pre-existing credits established by Nasdaq and the NSX.

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

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

⁹ 15 U.S.C. 78o-3.

¹⁰ 15 U.S.C. 78o-3(b)(5).

Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.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 furtherance of the purposes of the Act.

NASD has requested that the Commission waive the 30-day operative delay contained in Rule 19b-4(f)(6)(iii) under the Act¹³ because the NASD/Nasdaq TRF commenced operating with respect to Nasdaq-listed securities on August 1, 2006. In light of the foregoing, the Commission believes 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.¹⁴

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

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6).

¹³ 17 CFR 240.19b-4(f)(6)(iii).

¹⁴ 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. 15 U.S.C. 78c(f).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASD-2006-090 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-2006-090. 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 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-2006-090 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.¹⁵

Nancy M. Morris
Secretary

¹⁵ 17 CFR 200.30-3(a)(12).