

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-54909; File No. SR-NASD-2006-129)

December 11, 2006

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Use of a Special Indicator for Transactions Reported in Accordance with Section 3 of Schedule A to the NASD By-Laws

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 November 29, 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 the NASD. The NASD has submitted the proposed 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.⁵ 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

The NASD proposes to adopt new paragraph (f) of NASD Rule 6130C, “Trade Report Input,” which will require members that report to the NASD/NSX Trade Reporting Facility (“NASD/NSX TRF”)⁶ odd-lot transactions, sales where the buyer and seller have agreed to a price substantially unrelated to the current market for the security (also referred to as “away from

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).

⁵ The NASD has asked the Commission to waive the 30-day operative delay provided in Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).

⁶ The NASD/NSX TRF is the trade reporting facility established by the NASD and the National Stock Exchange.

the market sales”), and purchases or sales of securities effected upon the exercise of an over-the-counter (“OTC”) option to use a special indicator denoting that such transactions are reported in accordance with Section 3 of Schedule A to the NASD By-Laws. Because the systems changes required to enable the NASD/NSX TRF to support the proposed new trade report modifiers have not been completed, proposed NASD Rule 6130C(f) specifies that prior to December 15, 2006, members cannot use the NASD/NSX TRF to report these transactions to the NASD and must use another electronic mechanism to satisfy their reporting obligations. The text of proposed NASD Rule 6130C(f) is substantially similar to NASD Rule 6130(g), which the Commission approved on June 12, 2006,⁷ and which became effective on December 1, 2006. In this proposal, the NASD also is proposing technical conforming changes to NASD Rule 6130(g).

The text of the proposed rule change is available at www.nasd.com, at the principal offices of the NASD, 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, the 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. The 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

Background

⁷ See Securities Exchange Act Release No. 53977 (June 12, 2006), 71 FR 34976 (June 16, 2006) (order approving SR-NASD-2006-055) (“June 2006 Order”).

In the June 2006 Order, the Commission approved an NASD proposal that, among other things, amended the NASD's By-Laws to require members to report to the NASD in an automated manner all transactions that must be reported to the NASD and that are subject to a regulatory transaction fee pursuant to Section 3 of Schedule A to the NASD By-Laws ("Section 3").⁸ In that proposal, the NASD also adopted NASD Rule 6130(g), which requires members to report to the System, defined to include the NASD/Nasdaq Trade Reporting Facility (the "NASD/Nasdaq TRF"), odd-lot transactions, away from the market sales, and OTC option exercises with a special indicator denoting that such transactions are reported in accordance with Section 3. The effective date of the proposal was December 1, 2006.

On November 6, 2006, the Commission approved the NASD's proposal to establish the NASD/NSX TRF.⁹ The NASD/NSX TRF provides members with an additional mechanism for reporting transactions in exchange-listed securities executed otherwise than on an exchange. The rules relating to the NASD/NSX TRF, which are found in the NASD Rule 4000C and 6000C Series, are substantially similar to the rules relating to the NASD/Nasdaq TRF. The NASD/NSX TRF rules became effective on November 27, 2006, the date on which the NASD/NSX TRF commenced operation with respect to certain Nasdaq-listed securities.

Proposed amendments

The NASD proposes to adopt new NASD Rule 6130C(f) to require members that submit

⁸ See June 2006 Order, *supra* note 7. Pursuant to Section 31 of the Act, the 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. The NASD obtains its Section 31 fees and assessments from its membership, in accordance with Section 3.

⁹ See Securities Exchange Act Release No. 54715 (November 6, 2006), 71 FR 66354 (November 14, 2006) (order approving SR-NASD-2006-108).

reports to the NASD/NSX TRF for odd-lot transactions, away from the market sales, and transactions pursuant to the exercise of an OTC option to use a special indicator denoting that such transactions are reported in accordance with Section 3. The proposed new paragraph specifies that transactions may be entered as clearing or non-clearing. Pursuant to NASD Rule 4632C(e), these transactions are not to be reported to the NASD/NSX TRF for purposes of publication. Proposed NASD Rule 6130C(f) also specifies the trade report modifiers that must be used when reporting these transactions to the NASD/NSX TRF: (1) .RO for transactions of less than a normal unit of trading; (2) .RA for away from the market sales; and (3) .RX for transactions effected pursuant to the exercise of an OTC option. These trade report modifiers are identical to the modifiers required under NASD Rule 6130(g).

The text of proposed NASD Rule 6130C(f) differs slightly from the current text of NASD Rule 6130(g). While members have an affirmative obligation pursuant to Section 3 to report to the NASD in an automated manner all covered odd-lot transactions, away from the market sales, and exercises of OTC options, they are not required to report such transactions to the NASD/NSX TRF. Instead, members may use any NASD facility that accepts the electronic reporting of such transactions, e.g., the NASD/Nasdaq TRF or the Alternative Display Facility (“ADF”), to satisfy their reporting obligations. The text of proposed NASD Rule 6130C(f) makes clear that if members use the NASD/NSX TRF to report such transactions to the NASD, their reports must comply with the requirements set forth in NASD Rule 6130C(f). The NASD also is proposing conforming changes to the text of NASD Rule 6130(g) to maintain consistency among the rules for the NASD Trade Reporting Facilities and to clarify that members may, but

are not required, to use the NASD/Nasdaq TRF to report such transactions.¹⁰

Finally, the NASD notes that the systems changes that will enable the NASD/NSX TRF to support the new trade report modifiers cannot be implemented as of December 1, 2006. As a result, proposed NASD Rule 6130C(f) provides that prior to December 15, 2006, members cannot report these transactions to the NASD/NSX TRF and must use an alternative electronic mechanism to satisfy their reporting obligations under Section 3.

The NASD believes that requiring members to report these transactions for regulatory purposes with the appropriate modifier will enhance the audit trail while preventing the dissemination of trade information that could distort the tape.

The NASD has filed the proposed rule change for immediate effectiveness. The NASD proposes to make the proposed rule change operative on December 1, 2006, the effective date of the amendments to Section 3 and substantially similar amendments to NASD Rule 6130(g) relating to the NASD/Nasdaq TRF.¹¹

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹² 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. The NASD believes that the proposed rule change will enhance the audit trail while preventing the dissemination of trade information that could distort the tape.

¹⁰ The NASD notes that “System” is defined for purposes of NASD Rule 6130 to include the OTC Reporting Facility, which is the only mechanism available to members for reporting transactions in OTC equity securities in accordance with NASD Rule 6620.

¹¹ See June 2006 Order, supra note 7.

¹² 15 U.S.C. 78o-3(b)(6).

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

The 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

The NASD has filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act¹³ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁴ Because the NASD has designated the foregoing proposed rule change as one that: (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder. As required under Rule 19b-4(f)(6)(iii), the NASD provided the Commission with written notice of its intention to file the proposed rule change at least five business days prior to filing the proposal with the Commission or such shorter period as designated by the Commission.

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of 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. The NASD has asked the Commission to waive the 30-day operative delay to

¹³ 15 U.S.C. 78s(b)(3)(A).

¹⁴ 17 CFR 240.19b-4(f)(6).

allow the proposed rule change to become operative on December 1, 2006, the effective date for substantially similar amendments to NASD Rule 6130, which governs the NASD/Nasdaq TRF.¹⁵ The NASD notes, however, that the systems changes necessary to allow the NASD/NSX TRF to support the new trade report modifiers provided in NASD Rule 6130C(f) could not be implemented as of December 1, 2006. For that reason, NASD Rule 6130C(f) prohibits NASD members from reporting transactions covered by NASD Rule 6130(f) to the NASD/NSX TRF prior to December 15, 2006, and requires them to use an alternative electronic mechanism to satisfy their reporting obligations prior to that date.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow NASD members to submit to the NASD/NSX TRF trade reports for the transactions specified in NASD Rule 6130C(f) on or after December 15, 2006, thereby providing NASD members with an additional means to satisfy their obligation to report these transactions.¹⁶ For this reason, the Commission designates that the proposal become operative on December 1, 2006.

At any time within 60 days of the filing of such 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.

¹⁵ See June 2006 Order, *supra* note 7.

¹⁶ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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-2006-129 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-2006-129. 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 publicly available. All submissions should refer to File Number SR-NASD-2006-129 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.¹⁷

Florence E. Harmon
Deputy Secretary

¹⁷ 17 CFR 200.30-3(a)(12).