

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55325; File No. SR-NASD-2007-011)

February 21, 2007

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to a New NASD Trade Reporting Facility Established in Conjunction with NYSE Market, Inc.

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 February 1, 2007, 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 substantially by the NASD. The NASD has filed the proposal pursuant to Section 19(b)(3)(A) of the Act,³ 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

The NASD proposes to adopt rules relating to a new Trade Reporting Facility (the “NASD/NYSE TRF”) to be established by the NASD in conjunction with NYSE Market, Inc. (“NYSE”),⁵ that will provide members with an additional mechanism for reporting trades in exchange-listed securities effected otherwise than on an exchange. The proposed NASD/NYSE

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 NYSE Market, Inc. is the entity to which the New York Stock Exchange LLC, a self-regulatory organization, has delegated all non-regulatory functions involved in conducting the activities of a national securities exchange, including the trading functions, the listings functions, and market data.

TRF functionality and rules are substantially similar to the functionality and rules of the Trade Reporting Facilities established by the NASD and the Nasdaq Stock Market, Inc. (the “NASD/Nasdaq TRF”), the NASD and the National Stock Exchange, Inc. (the “NASD/NSX TRF”), and the NASD and the Boston Stock Exchange, Inc. (the “NASD/BSE TRF”) (collectively, the “Approved NASD Trade Reporting Facilities”), which were subject to notice and comment and approved by the Commission.⁶ The text of the proposed rule change is available at the NASD, in the Commission’s Public Reference Room, and 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, 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.

⁶ See Securities Exchange Act Release Nos. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006) (order approving File No. SR-NASD-2005-087) (the “NASD/Nasdaq TRF Approval Order”); 54715 (November 6, 2006), 71 FR 66354 (November 14, 2006) (order approving File No. SR-NASD-2006-108); and 54931 (December 13, 2006), 71 FR 76409 (December 20, 2006) (order approving File No. SR-NASD-2006-115). See also Securities Exchange Act Release No. 54798 (November 21, 2006), 71 FR 69156 (November 29, 2006) (order approving File No. SR-NASD-2006-104) (the “Phase II Approval Order”).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change would establish the new NASD/NYSE TRF on substantially the same terms as the Approved NASD Trade Reporting Facilities. The NASD/NYSE TRF will provide members with an additional mechanism, which has been developed by the NYSE, for reporting locked-in transactions in exchange-listed securities executed otherwise than on an exchange. Members will match and/or execute orders internally or through proprietary systems and submit these trades to the NASD/NYSE TRF with the appropriate information and modifiers. All trades submitted to the NASD/NYSE TRF must be locked-in prior to entry into the system and the NASD/NYSE TRF will have no trade comparison functionality. Participants wishing to report to the NASD/NYSE TRF on behalf of another NASD member may do so only pursuant to a valid give-up agreement, as specified in the proposed rules.

The NASD/NYSE TRF will report the trades to the appropriate exclusive securities information processor (“SIP”).⁷ As with trades reported to the Approved NASD Trade Reporting Facilities, NASD/NYSE TRF transactions disseminated to the media will include a modifier indicating the source of such transactions that would distinguish them from transactions executed on or through the NYSE or another NASD Trade Reporting Facility. In addition, the NASD/NYSE TRF will provide the NASD with a real-time copy of each trade report for regulatory review purposes. Unlike the Approved NASD Trade Reporting Facilities, the

⁷ The NASD/NYSE TRF will have controls in place to ensure that transactions that are reported to the NASD/NYSE TRF, but that are priced significantly away from the current market, will not be submitted to the SIP. The NASD represents that this is consistent with current practice, in that neither the NASD’s Alternative Display Facility nor the Approved NASD Trade Reporting Facilities currently submit such trades to the SIP. According to the NASD, this practice is designed to preserve the integrity of the tape.

NASD/NYSE TRF will not at this time submit transactions to clearing.

Like the Approved NASD Trade Reporting Facilities, the NASD/NYSE TRF will be a facility of the NASD, subject to regulation by the NASD and the NASD's registration as a national securities association. It will not be a service "for the purpose of effecting or reporting a transaction" on the NYSE; rather, it will be a service for the purpose of reporting over-the-counter ("OTC") transactions in exchange-listed securities to the NASD.⁸ Thus, members that meet all applicable requirements will have the option of reporting transactions in exchange-listed securities executed otherwise than on an exchange to the NASD/NYSE TRF, one of the Approved NASD Trade Reporting Facilities, the NASD's Alternative Display Facility ("ADF"),⁹ or the NASD's Intermarket Trading System/Computer Assisted Execution System ("NASD ITS/CAES System").¹⁰

The NYSE has developed the system that participants will use to access the NASD/NYSE TRF. Technical specifications to connect to the NASD/NYSE TRF system are available upon request to NASD and will be accessible through NASD's web site at a later date.

⁸ See NASD/Nasdaq TRF Approval Order, supra note 6.

⁹ The Commission approved a proposed rule change that expanded the ADF's functionality to all exchange-listed securities. See Securities Exchange Act Release No. 54537 (September 28, 2006), 71 FR 59173 (October 6, 2006) (order approving File No. SR-NASD-2006-091).

¹⁰ As part of File No. SR-NASD-2006-104, the NASD proposed rule changes providing for the operation of the NASD ITS/CAES System, which includes the ability to report OTC transactions in non-Nasdaq exchange-listed securities. See Phase II Approval Order, supra note 6. The NASD represents that it will have an integrated audit trail of all TRF, ADF, and ITS/CAES System transactions, as applicable in a particular security, and will have integrated surveillance capabilities. The NASD expects that comprehensive audit trail and surveillance integration on an automated basis will be completed by the end of the first quarter of 2007. Prior to that time, the NASD represents that its staff will be able to create an integrated audit trail on a manual basis as needed for regulatory purposes.

NASD/NYSE TRF Limited Liability Company Agreement

The NASD and the NYSE propose to enter into a Limited Liability Company Agreement of the NASD/NYSE Trade Reporting Facility LLC (“the NASD/NYSE LLC Agreement”). The terms of the NASD/NYSE LLC Agreement are substantially similar to the terms of the LLC agreements relating to the Approved NASD Trade Reporting Facilities.

The NASD will have sole regulatory responsibility for the NASD/NYSE TRF, while the NYSE agrees to pay the cost of regulation and will provide systems to enable members to report trades to the NASD/NYSE TRF. The NYSE will be entitled to the profits and losses, if any, derived from the operation of the NASD/NYSE TRF. The provisions of the NASD/NYSE LLC Agreement regarding the management of the NASD/NYSE TRF, and the respective rights and responsibilities of the NASD, the “SRO Member,” and the NYSE, the “Business Member,” are identical to the terms of the LLC agreements relating to the Approved NASD Trade Reporting Facilities.

The termination provisions of the NASD/NYSE LLC Agreement are identical to the termination provisions of the LLC agreements relating to the NASD/NSX TRF and the NASD/BSE TRF. In the event of termination of the NASD/NYSE TRF arrangement, the NASD represents that it will be able to fulfill all of its regulatory obligations with respect to OTC trade reporting through its other facilities.

The NASD/NYSE LLC Agreement includes a provision relating to Capital Accounts that is not included in the LLC Agreements relating to the Approved NASD Trade Reporting Facilities. This provision was added for tax purposes only.

NASD/NYSE Trade Reporting Facility Rules

Members will report locked-in trades in exchange-listed securities effected otherwise than on an exchange to the NASD/NYSE TRF pursuant to NASD rules. As such, the NASD is

proposing the new NASD Rule 4000E and Rule 6000E Series relating to the use and operation of the NASD/NYSE TRF. The proposed rules are substantially similar to the rules approved by the Commission relating to the Approved NASD Trade Reporting Facilities.¹¹ Discussed below are the differences between the proposed rules and the rules that the Commission has approved for one or more of the Approved NASD Trade Reporting Facilities.¹²

First, similar to the NASD/BSE TRF, participants will be able to use three-party reports for reporting trades to the NASD/NYSE TRF. However, pursuant to proposed NASD Rule 4632E(d), Reporting ECNs, as defined in proposed NASD Rule 6110E, are required to use the three-party trade report when submitting trades to the NASD/NYSE TRF. The NASD/BSE TRF rules permit, but do not require, Reporting ECNs to use three-party trade reports.

Second, unlike the Approved NASD Trade Reporting Facilities, the NASD/NYSE TRF will not submit any trades to clearing. Pursuant to proposed NASD Rules 6130E(a) and 6140E, where appropriate, participants must have a valid Qualified Service Representative (“QSR”) agreement with the National Securities Clearing Corporation or similar arrangement to clear trades submitted to the NASD/NYSE TRF (e.g., trades with customers generally do not need to be sent to clearing). Accordingly, references to “clearing only” reports that appear in the rules relating to the Approved NASD Trade Reporting Facilities have been omitted from the proposed

¹¹ See the NASD Rule 4000 and Rule 6100 Series relating to the NASD/Nasdaq TRF; the NASD Rule 4000C and 6000C Series relating to the NASD/NSX TRF; and the NASD Rule 4000D and 6000D Series relating to the NASD/BSE TRF.

¹² The NASD will submit a separate filing proposing amendments to the transaction reporting rules relating to the NASD/NYSE TRF consistent with the new requirements of Regulation NMS. The NASD intends that such amendments will be substantially similar to the amendments the NASD proposed for the NASD/Nasdaq TRF and the ADF in File Nos. SR-NASD-2007-002 and SR-NASD-2007-001, respectively. See Securities Exchange Act Release Nos. 55101 (January 12, 2007), 72 FR 2568 (January 19, 2007) (notice of filing and immediate effectiveness of File No. SR-NASD-2007-002); and 55088 (January 11, 2007), 72 FR 2573 (January 19, 2007) (notice of filing and immediate effectiveness of File No. SR-NASD-2007-001).

rules (see proposed NASD Rules 4632E(e)(3)(B) and 6130E(f)). Additionally, proposed NASD Rule 6130E(a) provides that the NASD/NYSE TRF will accept trades reported as other than regular way settlement (i.e., Cash, Next-Day, Seller's Option); however, the NASD/NYSE TRF will not compare or submit these trades to clearing.

The NASD notes that the proposed rule change does not include any proposed rules relating to fees, assessments, and credits specifically related to the NASD/NYSE TRF. Fees, assessments, and credits, if any, with respect to the NASD/NYSE TRF will be the subject of a future rule filing with the Commission.

The NASD has filed the proposed rule change for immediate effectiveness. The NASD proposes that the operative date of the proposed rule change will be the date upon which the NASD/NYSE TRF commences operation, which is currently anticipated to be in the first quarter of 2007.¹³ The NASD will provide notice of that date upon successful completion of system testing and certification.

2. Statutory Basis

The proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹⁴ 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 establishment of the NASD/NYSE TRF is in the public interest and appropriate for the protection of investors and

¹³ As noted below, a proposed rule change filed pursuant to Section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6) thereunder does not become operative for 30 days from the date on which the proposal was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The NASD has not asked the Commission to waive the 30-day operative delay for the proposal. Accordingly, the proposal will become operative 30 days from the date on which it was filed.

¹⁴ 15 U.S.C. 78o-3(b)(6).

the maintenance of fair and orderly markets because it will provide members with another mechanism to report transactions in exchange-listed securities effected otherwise than on an exchange.

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

The proposed rule change will not 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 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 Act¹⁵ and Rule 19b-4(f)(6) thereunder.¹⁶ As required by Rule 19b-4(f)(6)(iii),¹⁷ the 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.

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

¹⁵ 15 U.S.C. 78s(b)(3)(A).

¹⁶ 17 CFR 240.19b-4(f)(6).

¹⁷ 17 CFR 240.19b-4(f)(6)(iii).

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. Please include File Number SR-NASD-2007-011 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-2007-011. 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-2007-011 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.¹⁸

Florence E. Harmon
Deputy Secretary

¹⁸ 17 CFR 200.30-3(a)(12).