

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-49628; File No. SR-NASD-2004-023)

April 29, 2004

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. to Amend the Order Audit Trail System Rules Relating to Execution Reports

On February 5, 2004, the National Association of Securities Dealers, Inc. (“NASD”) filed with the Securities and Exchange Commission (“Commission”), 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> a proposed rule change to amend NASD Rule 6954(d) to require that members record and report the execution price and firm capacity (e.g., agency, principal or riskless principal) in Order Audit Trail System (“OATS”) Execution Reports. On March 11, 2004, NASD filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The proposed rule change, as amended, was published for comment in the Federal Register on March 24, 2004.<sup>4</sup> The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a

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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> See letter from Barbara Z. Sweeney, Senior Vice President and Corporate Secretary, NASD to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated March 10, 2004 (“Amendment No. 1”). Amendment No. 1 replaced the proposed rule change in its entirety.

<sup>4</sup> See Securities Exchange Act Release No. 49439 (March 17, 2004), 69 FR 13927.

national securities association.<sup>5</sup> In particular, the Commission believes that the proposal is consistent with Section 15A(b)(6) of the Act<sup>6</sup> which requires, among other things, that the rules of an association 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 Commission believes that NASD's proposal to require its members to record and report the execution price and firm capacity as part of the OATS Execution Report should allow NASD to address potential gaps in the audit trail information currently collected by NASD. Consequently, the Commission believes that the proposed rule change should enhance OATS information and improve NASD's ability to conduct surveillance and investigations relating to compliance with NASD and other applicable rules.

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<sup>5</sup> In approving this proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act<sup>7</sup>, that the proposed rule change, as amended, (SR-NASD-2004-023) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

Margaret H. McFarland  
Deputy Secretary

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<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</sup> 17 CFR 200.30-3(a)(12).