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WACHOVIA SECURITIES

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Jonathan Katz, Secretary
Securities and Exchange Commission
450 Fifth Street, NW (6-9)
Washington, DC 20549

Re: Amendment No. 2 to Proposed Rule Change by NASD, Inc. Relating to Amendments to Order Audit Trail System (“OATS”) Rules (Release No. 34-51890, File No. SR-NASD-00-23) (hereinafter the “Amendment”)

Dear Mr. Katz:

Wachovia Securities, LLC (“Wachovia Securities”) appreciates the opportunity to comment on the above-referenced Amendment. Wachovia Securities supports the part of the Amendment which, under defined circumstances, would relieve a member firm from the reporting obligations of OATS. As currently drafted, however, the Amendment raises considerable concerns for Wachovia Securities where it proposes a new definition for “time of receipt”. Although NASD has the goal of improving and enhancing the effectiveness of OATS, as currently structured, the Amendment will likely create a tremendous burden on firms to develop systems to comply, and there is a likelihood that the changes will reduce the effectiveness of OATS as a regulatory tool.

This comment letter will focus on these concerns and also urge that the SEC order NASD to delay implementation of the rule for a number of months in order that brokerage firms have sufficient time to make any necessary system changes and test them thoroughly before the system is activated.

I. Introduction and Overview

Wachovia Securities is a full service brokerage firm serving clients in 49 states. It assists its 5.7 million active retail accounts by offering clients a suite of financial services, and handles countless customer trades daily.

II. The Proposing Release Properly Excludes Some Firms from OATS Reporting Requirements

The Amendment wisely takes the real world into account and proposes certain conditions under which a member would not be a “reporting member” for OATS purposes. Acknowledging that many members route their orders in a non-discretionary fashion to a single NASD member called the “receiving Reporting Member” in the Amendment, who then actually reports the trade, the Amendment sets up criteria that would exempt firms from reporting. In summary, the four key conditions:

- 1) Immediate non-discretionary order routing to a single receiving Reporting Member;
- 2) No direction or control over subsequent routing or execution by the member;
- 3) The receiving Reporting Member records and reports all required information; and
- 4) Existence of written agreement specifying functions and responsibilities to achieve full compliance with the rules.

The exemption fits perfectly with many of the existing arrangements between introducing and clearing firms today. As will be discussed more below, when properly tested prior to implementation, the rule will give the NASD a trading process that operates smoothly and efficiently. At the same time, it is important that there is guidance and definitions on the condition that the member “does not direct and does not maintain control” over subsequent routing by the receiving Reporting Member. It is important that NASD offer some FAQs or other opportunities for the industry to clearly understand what is meant by “direct” and “maintain control”. For example, it appears that the conditions that remove you from the reporting requirements are order specific, such that if a member fails to meet the conditions for a given order, that order must be reported by the member as opposed to relying upon the receiving Reporting Member. There needs to be additional dialogue to insure that the interpretation and application of the Amendment follows that understanding.

III. Order Origination and Time of Receipt

A. The Time of Receipt

As noted above, Wachovia is generally supportive of the concept that capturing order data is an important regulatory function that serves to protect the market and investors. The Amendment causes considerable consternation, however, in its requirement that for OATS reporting purposes members must capture the time the order is received from the customer and if different, the time the order is received at the firm’s trading desk. Including the time of receipt from a customer as a part of OATS is an enormous undertaking for most firms. For a lot of firms, the programming necessary to get customer information into OATS will be complex and cumbersome. For large firms such as Wachovia, capturing the system time stamps from the hundreds of branches and then the desk and transmitting all of that data everyday is going to generate a tremendous amount of data to manage. Such large data batches build in extra costs in data creation and storage.

Since, as many have noted, the time of receipt of an order from the customer is otherwise required, the additional costs of including that information in OATS is unwarranted. Rather than creating a rule that lumps all trades into one box, it would seem preferable to have NASD seek, in circumstances that indicate the information is relevant, the customer order time for a given trade. Otherwise, imposing a customer time stamp burden into OATS system risks having the costs of that additional entry into OATS that far outweigh the benefits expected by the NASD.

B. Additional Time to Implement

The changes firms will need to make to comply with the Amendment are such that it is critical that NASD allow sufficient time to accomplish the changes. Even though NASD acknowledges the burden when it requests 120 days to alter the systems, many firms would probably state they need far more than 120 days. This project could range from six to nine months to implement, particularly if it is properly phased in. "Phasing in" would include considerable "beta" testing of the system, including NASD making mock data requests to determine what glitches might exist. A key part of the phase in also should include an honest and realistic assessment by NASD of the OATS backbone and whether it is sufficient and appropriate for the data load it is required to handle. Frequent member calls to discuss the OATS system and explore problematic scenarios all will go far towards easing the burdens and costs of making the adjustments required by the Amendment.

IV. Conclusion

Wachovia Securities supports the Amendment's definition of members who need to report under OATS. We trust that the Commission will consider carefully concerns about entering the time of receipt of customer orders and the need for additional time to implement any changes. We again appreciate the opportunity to provide these comments, and we would be pleased to answer any questions or provide more information to the Commission or the Staff as they work through these important issues.

Very truly yours,

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