WULFF, HANSEN & CO.
ESTABLISHED 1931
INVESTMENT BANKERS
351 CALIFORNIA STREET, SUITE 1000
SAN FRANCISCO 94104
(415) 421-8900

July 12, 2005

16

Jonathan G. Katz
Secretary
Securities and Exchange Commission,
100 F Street, NE, Washington, DC 20549–9303.

Re: File Number SR-NASD–00–23

Dear Mr. Katz:

Wulff, Hansen & Co. is a regional broker/dealer specializing in public finance and municipal bonds. We are writing to comment on NASD's Amendment No. 2 to the proposed rule change relating to the Order Audit Trail System (OATS). We are presently scheduled to participate in Phase III of the OATS implementation.

NASD has proposed that certain member firms be exempt from the OATS reporting requirements. One of its proposed criteria for exemption is a revenue threshold of $2,000,000. While we agree that the principle of exempting small firms from the OATS burden is fair and reasonable, we believe that the revenue and other factors considered (e.g., principal transactions) should be only those involving OATS-relevant transactions (i.e., NASDAQ securities).

To use total firm revenue as the criterion is illogical and would be unfair to many smaller firms who are primarily engaged in non-equity lines of business such as public finance or sales of insurance and mutual funds. Such firms often handle orders in NASDAQ securities only as an occasional accommodation for their customers. We, for example, in terms of overall revenue are well over the dollar threshold for the proposed exemption, but our total revenue from equity transactions represents only a few percentage points of our total and is very much less than the threshold amount. Our revenue from NASDAQ transactions, in turn, is a small fraction of our equity revenue, and is thus almost invisible in relation to our total revenue.

Imagine two firms, A and B:

- Firm A has $7 million in revenue of which $200,000 (3%) comes from OATS-eligible trades.
- Firm B has $1.8 million in revenue of which $1.5 million (83%) is from such trades.

Firm A, generating very small amounts of data, would be forced to take on the full operational burden of participating in a system barely relevant to its primary operations.
Firm B, with many times the OATS-trade revenue of Firm A, would nevertheless be exempt from reporting, thus getting a 'free ride' despite this being its primary business and generating much more data than does Firm A.

We do not understand how this improves the securities markets or increases investor protection. If anyone is to be exempt, it should be Firm A, which generates much less reportable data and revenue from the relevant line of business than does Firm B. Firm A may be a larger firm in absolute terms, but so far as OATS is concerned, it is very much smaller than the exempt Firm B.

The operational burdens of OATS are such that we, and many similar Phase III firms not qualifying for the proposed total-revenue-based exemption, will be forced to consider whether we can continue to accommodate occasional customer orders for NASDAQ stocks. If we and similar firms conclude that we cannot reasonably continue to provide this service, it will be an inconvenience to the customer (who would have to open a brokerage account elsewhere although the vast majority of his investing activities remained with us) and will reduce the diversity and vibrancy of the industry as a whole.

There are precedents for using revenue from a relevant line of business, rather than overall firm revenue, as the criterion for exemption from a particular NASD requirement. For example, the Commission has approved a rule exempting certain member firms from the reporting provisions of NASD Rule 3150 (the INSITE program). Because INSITE is intended to provide data on a member's equity business, firms deriving most of their revenue from fixed-income securities were made eligible for the exemption.

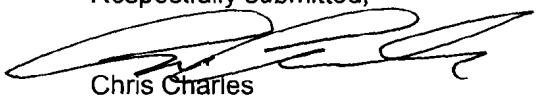
Since OATS, even more than INSITE, is limited not only to equity transactions in general but to an even smaller and more limited subset (NASDAQ securities) of those transactions, it seems illogical to grant exemptions based on a gross firm revenue figure which may bear little relation to the amount of OATS-reportable business a firm engages in. Firms engaged primarily in non-equity businesses, but who may accept an occasional NASDAQ order, would be unreasonably excluded from exemption if the qualifying amount were based on total firm revenue from all sources.

Requiring participation by small firms with insignificant NASDAQ-related revenue would also impose needless inefficiencies on NASD itself. Examiners would doubtless be required to spend a certain amount of time and resources confirming and evaluating such a firm's compliance with the OATS rules regardless of the small volume of business involved. In that context those regulatory resources would be better used, to more public benefit and producing more investor protection, on examining the firm's primary business rather than a minor sideline.

Therefore, we respectfully suggest that any revenue-based exemption from OATS requirements be based on revenue from transactions in NASDAQ securities rather than on a firm's total revenue from all sources. The dollar amount could be set at considerably less (perhaps 50% to 75% less) than the $2,000,000 figure set forth in the current proposal.

Thank you for the opportunity to comment on this proposed rule change.

Respectfully submitted,



Chris Charles
President