

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-55806; File No. SR-NASD-2007-028)

May 23, 2007

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Order Audit Trail System

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 April 17, 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 substantially prepared by NASD. On May 18, 2007, NASD filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to amend Rules 6951 and 6954 to require members that transmit an intermarket sweep order (“ISO”) to another member, electronic communications network, nonmember, or exchange to record and report the fact that the order was an ISO. The text of the proposed rule change is available on NASD’s Web site at <http://www.nasd.com>, at NASD’s principal office, 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, NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

rule change. The text of these statements may be examined at the places specified in Item IV below. 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

NASD Rules 6950 through 6958 (“OATS Rules”) impose obligations on member firms to record in electronic form and report to NASD on a daily basis certain information regarding orders in Nasdaq-listed securities originated, received, transmitted, modified, canceled, or executed by NASD members.³ NASD integrates this Order Audit Trail System (“OATS”) information with quote and transaction information to create a time-sequenced record of orders, quotes, and transactions. This information is critical to NASD in conducting surveillance and investigations of members for violations of NASD rules and the federal securities laws.

On June 9, 2005, the Commission adopted Regulation NMS, which established new substantive rules designed to modernize and strengthen the regulatory structure of the U.S. equities markets.⁴ Among other things, Regulation NMS adopted an Order Protection Rule⁵ that requires trading centers to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the execution of trades at prices inferior to protected quotations

³ Beginning on February 4, 2008, members also will be required to record and report order information regarding all OTC equity securities, as defined in NASD Rule 6951. See Securities Exchange Act Release No. 54585 (October 10, 2006), 71 FR 61112 (October 17, 2006) (SR-NASD-2005-101); see also NASD Notice to Members 06-70 (December 2006) and Securities Exchange Act Release No. 55440 (March 9, 2007), 72 FR 12852 (March 19, 2007) (SR-NASD-2007-019).

⁴ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

⁵ 17 CFR 242.611.

displayed by automated trading centers, subject to applicable exceptions. One of the exceptions from the Order Protection Rule is when the transaction that constitutes a trade-through⁶ is “effected by a trading center that simultaneously routed an intermarket sweep order to execute against the full displayed size of any protected quotation in the NMS stock that was traded through.”⁷

The purpose of the proposed rule change is to require member firms to record the fact that an order in an OATS-eligible security is an ISO when the member routes an ISO to another member or non-member. The member would be required to include this information in the Route Report it submits to NASD pursuant to the OATS Rules.⁸ This requirement will ensure that NASD knows that the order was an ISO and can utilize that information when reviewing audit trails to ensure compliance with Regulation NMS.⁹

⁶ A “trade-through” is “the purchase or sale of an NMS stock during regular trading hours, either as principal or agent, at a price that is lower than a protected bid or higher than a protected offer.” See 17 CFR 242.600(b)(77).

⁷ See 17 CFR 242.611(b)(6). The phrase “intermarket sweep order” is defined as “a limit order for an NMS stock that meets the following requirements: (i) When routed to a trading center, the limit order is identified as an intermarket sweep order; and (ii) Simultaneously with the routing of the limit order identified as an intermarket sweep order, one or more additional limit orders, as necessary, are routed to execute against the full displayed size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected offer, in the case of a limit order to buy, for the NMS stock with a price that is superior to the limit price of the limit order identified as an intermarket sweep order. These additional routed orders must also be marked as intermarket sweep orders.” The proposed rule change adopts this same definition of intermarket sweep order for purposes of the OATS Rules. See 17 CFR 242.600(b)(30).

⁸ When a member transmits an order in an OATS-eligible security to another member, electronic communications network, non-member, or exchange for handling or execution, the routing member is required to submit a Route Report to NASD. The categories of information that a member must include in a Route Report are set forth in NASD Rule 6954(c) and in the OATS Reporting Technical Specifications published by NASD.

⁹ Members are also required to submit New Order Reports when they receive an order in an OATS-eligible security. NASD Rule 6954(b) and the OATS Reporting Technical

NASD will announce the effective date of the proposed rule change in a Notice to Members to be published no later than 60 days following Commission approval. The effective date will be February 4, 2008, to coincide with the changes to the OATS Rules approved by the Commission on October 10, 2006.¹⁰ Although firms will not be required to begin using the ISO routing method code on Route Reports until February 4, 2008, NASD states that the code will be available for use by firms beginning on June 11, 2007. Firms are encouraged to use the ISO code on their Route Reports as soon as possible to facilitate NASD's ability to determine whether the trade was made in reliance on an ISO exception from the Order Protection Rule.¹¹ As noted in the December 11, 2006 version of the OATS Reporting Technical Specifications, firms will be required to use the ISO Special Handling Code on New Order Reports upon implementation of the Order Protection Rule.¹²

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹³ which requires, among other things, that NASD rules must be designed

Specifications set forth the information that a member must include in a New Order Report. NASD Rule 6954(b)(15) already requires members to include “special handling requests, specified by [NASD] for purposes of this Rule.” Pursuant to that provision, the most recent version of the OATS Reporting Technical Specifications includes a new special handling code for ISOs in New Order Reports, which would be used when a member relies on the exception from the Order Protection Rule for a transaction that “was the execution of an order identified as an intermarket sweep order.” See 17 CFR 242.611(b)(5). Because NASD Rule 6954(b) already provides NASD with the authority to establish a new code for ISOs in New Order Reports, the proposed rule filing does not address that portion of the rule and only seeks to establish a new code for ISOs in Route Reports under NASD Rule 6954(c).

¹⁰ See supra note 3.

¹¹ 17 CFR 242.611.

¹² Id.

¹³ 15 U.S.C. 78o-3(b)(6).

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. NASD believes that the proposed rule change will enhance OATS data and ensure that NASD is able to monitor compliance with Regulation NMS in a more effective manner.

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

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

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which NASD consents, the Commission will:

- (A) by order approve such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

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-2007-028 on the subject line.

Paper comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASD-2007-028. 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-2007-028 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.¹⁴

Florence E. Harmon
Deputy Secretary

¹⁴ 17 CFR 200.30-3(a)(12).