

change if organized by the member for its own associated persons. Some commenters who responded felt that when a broker-dealer conducts training and educational seminars with offeror participation it should not constitute non-cash compensation, because the broker-dealer is fully aware of the offeror's participation, because the broker-dealer's supervisory control is not diminished or undermined, because this is not typically an area of abuse, or because flexibility is needed to arrange meetings at locations convenient to attendees and within the budgets available (Comments 2, 7, 20, 23, 26, 27, 28).

Other commenters stated that mere offeror participation, as long as the offeror does not provide any monetary contributions, should not result in the meeting being treated as non-cash compensation (Comments 3, 4, 5, 8).

4. *The Tully Committee identified the practice of payment of higher commission to registered representatives for proprietary products than for non-proprietary products as an arrangement that can create conflicts of interest. The proposed rule change would not prohibit or regulate this practice. The proposed rule change would, however, prohibit a contest granting cash awards if the contest gives greater weight to certain securities than others. Commenters are invited to address whether the proposed rule change should be extended to cover ordinary compensation practices in addition to incentive compensation practices.* Most commenters who responded stated that the proposed rule change should not cover ordinary compensation practices because the regulatory objectives cited in the proposed amendments are unrelated to the payment of commissions, such an approach would have anti-competitive implications, such an approach would delay the date of effectiveness of the proposed rules, or it would result in duplicative, overlapping regulation (Comments 2, 3, 6, 7, 8, 12, 13, 16, 23, 26, 27).

One commenter, however, stated that he could see barring differentials in cash compensation, since cash compensation is the strongest possible incentive (Comment 4). Another commenter stated that The Tully Committee's report on compensation practices voiced concern over possible conflicts of interest created by both higher commission payments for proprietary products and narrowly focused incentive sales contests. If such practices genuinely create conflicts of interest, the effect of the proposed rule change is to allow higher commissions to be paid year round under a general

period. We fail to see the distinction. The ultimate issue for regulatory consideration should be suitability. Regulatory authorities should determine whether or not a conflict of interest is created by higher payments, regardless of the duration of the program and provide consistent proposals for rule changes accordingly (Comment 5).

[FR Doc. 97-23540 Filed 9-4-97; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38990; File No. SR-NASD-97-56]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Creation of New Rules 6900 Through 6970 or an Audit Trail System Owned and Operated by the National Association of Securities Dealers, Inc.

August 28, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 25, 1997,<sup>1</sup> the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation, Inc. ("NASDR"). 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

NASD Regulation is proposing new Rules 6900 through 6970 of the Conduct Rules of the NASD, relating to an audit trail system owned and operated by the NASD that is designed to capture order information reported by members for integration with The Nasdaq Stock Market, Inc. ("Nasdaq") quote information and trade information reported to the Automated Confirmation Transaction Service ("ACT") in order to provide the Association with an accurate time sequenced record of orders and transactions. Below is the text of the proposed rule change. Proposed new language is underlined.

<sup>1</sup> The proposal was originally filed on July 29, 1997, but was subsequently amended on August 25, 1997.

#### 3110. Books and Records

\* \* \* \* \*

(c) *Each member that acts as a market maker in an equity security quoted in the Nasdaq system shall record, with respect to each order for such security that is received and executed at its trading department, an identification of each registered person who executes the order.*

\* \* \* \* \*

#### 6900. Order Audit System

##### 6910. Definitions

*For purposes of the Rules 6900 through 6970:*

(a) *Terms shall have the same meaning as those defined in the By-Laws and other rules of the Association, unless otherwise specified.*

(b) *"Association" shall mean the National Association of Securities Dealers, Inc. and its two subsidiaries, NASD Regulation, Inc. and The Nasdaq Stock Market, Inc.*

(c) *"Customer" shall mean a person other than a broker or dealer.*

(d) *"ACT" shall mean the Automated Confirmation Transaction Service operated by Nasdaq, Inc.*

(e) *"Index Arbitrage Trade" shall mean an arbitrage trading strategy involving the purchase or sale of a "basket" or group of securities in conjunction with the purchase or sale, or intended purchase or sale, of one or more cash-settled options or futures contracts on index stock groups, or options on any such futures contracts in an attempt to profit by the price difference, as further defined in New York Stock Exchange Rule 80A.*

(f) *"Order" shall mean any oral, written, or electronic instruction to effect a transaction in a Nasdaq equity security that is received by a member from another person for handling or execution, or that is originated by a department of a member for execution by the same or another member, other than any such instruction to effect a proprietary transaction originated by a trading desk in the ordinary course of a member's market making activities.*

(g) *"Order Audit System" shall mean the automated system owned and operated by the Association that is designed to capture Order information reported by members for integration with trade information reported to ACT and quotation information disseminated by members in order to provide the Association with an accurate time sequenced record of orders and transactions.*

(h) *"Program Trade" shall mean a trading strategy involving the related purchase or sale of a group of 15 or*

more securities having a total market value of \$1 million or more, as further defined in New York Stock Exchange Rule 80A.

(i) "Reporting Agent" shall mean a member that enters into any agreement with another member pursuant to which the Reporting Agent agrees to fulfill such member's obligations under Rule 6950.

(j) "Reporting Member" shall mean a member that receives or originates an Order.

#### 6920. Applicability

(a) Unless otherwise indicated, the requirements of Rules 6910 through 6970 are in addition to the requirements contained in the By-Laws and other rules of the Association.

(b) Unless otherwise indicated, the requirements of Rules 6910 through 6970 shall apply to all brokers and dealers admitted to membership in the Association and to their associated persons.

(c) Unless otherwise indicated, the requirements of Rules 6910 through 6970 shall apply to all executed or unexecuted Orders for equity securities traded in The Nasdaq Stock Market.

#### 6930. Synchronization of Member Business Clocks

Each member shall synchronize its business clocks that are used for purposes of recording the date and time of any event that must be recorded pursuant to the By-Laws or other rules of the Association, with reference to a time source as designated by the Association, and shall maintain the synchronization of such business clocks in conformity with such procedures as are prescribed by the Association.

#### 6940. Recording of Order Information

##### (a) Procedures:

(1) Subject to the terms and conditions contained in Rules 6910 through 6970, each Reporting Member shall:

(A) immediately following receipt or origination of an Order, record each item of information described in paragraph (b) of this Rule that applies to such Order, and record any additional information described in paragraph (b) immediately after such information is received or becomes available; and

(b) immediately following the transmission of an Order to another member, or from one department to another within the same member, record each item of information described in paragraph (b) of this Rule that applies with respect to such transmission.

(2) Each required record of the time of an event shall be expressed in terms of hours, minutes and seconds.

(3) Each Reporting Member shall, by the end of each business day, record each item of information required to be recorded under this Rule in such electronic form as is prescribed by the Association from time to time.

(b) Order information required to be recorded under this Rule includes:

1. an order identifier assigned to the Order by the Reporting Member that uniquely identifies the Order for the date it was received;

2. the identification symbol assigned by the Association to the security to which the Order applies;

3. the member identification symbol assigned by the Association to the Reporting Member;

4. the identification of any department and any registered person who receives the Order directly from a customer;

5. where the Order is originated by a Reporting Member, the identification of the department of the member that originates the Order;

6. where the Reporting Member is a party to an agreement described in Rule 6950(c), the identification of the Reporting Agent;

7. the number of shares to which the Order applies;

8. the designation of the Order as a buy or sell order;

9. the designation of the Order as a short sale order;

10. the designation of the Order as a market order, limit order, stop order or stop limit order;

11. any limit or stop price prescribed in the Order;

12. the date on which the Order expires;

13. the time limit during which the Order is in force;

14. any request by a customer that an order not be displayed, or that a block size order be displayed, pursuant to Rule 11Ac1-4(c) under the Securities Exchange Act of 1934;

15. any minimum quantity of shares required for execution;

16. special handling requests, specified by the Association for purposes of this Rule;

17. the date and time the Order is originated or received by a Reporting Member;

18. an identification of the Order as related to a Program Trade or an Index Arbitrage Trade;

19. the type of account, i.e., retail, wholesale, employee, or proprietary, for which the Order is submitted;

20. where a Reporting Member transmits an Order to another

department within the member: (A) the order identifier assigned to the Order by the Reporting Member, (B) the member identification symbol assigned by the Association to the Reporting Member, (C) the date the Order was first originated or received by the Reporting Member, (D) an identification of the department to which the Order was transmitted, and (E) the date and time the Order was received by that department;

21. when a Reporting Member transmits an Order to another member: (A) the order identifier assigned to the Order by the Reporting Member, (B) the member identification symbol assigned by the Association to the Reporting Member, (C) the member identification symbol assigned by the Association to the member to which the Order is transmitted, (D) the date the Order was first originated or received by the Reporting Member, (E) the date and time the Order is transmitted, and (F) the number of shares to which the transmission applies.

22. when a Reporting Member receives an Order from another member, in addition to all other applicable information items that apply with respect to such Order: (A) the order identifier assigned to the Order by the member that transmits the Order, (B) the member identification symbol assigned by the Association to the member that transmits the Order, and (C) the date the Order was first originated or received by the member that transmits the Order;

23. when a Reporting Member modifies or receives a modification to the terms of the Order, in addition to all other applicable information items (including a new order identifier) that would apply as if the modified Order were originated or received at the time of the modification: (A) the order identifier assigned to the Order by the Reporting Member prior to the modification, (B) the date and time the modifications was originated or received, and (C) the date the Order was first originated or received by the Reporting Member.

24. when the Reporting Member cancels or receives a cancellation of an Order, in whole or in part: (A) the order identifier assigned to the Order by the Reporting Member, (B) the member identification symbol assigned by the Association to the Reporting Member, (C) the date the Order was first originated or received by the Reporting Member, (D) the date and time the cancellation was originated or received, (E) if the open balance of an Order is canceled after a partial execution, the number of shares canceled, and (F) whether the Order was canceled on the

instruction of a customer or the Reporting Member; and

25. when an Order is executed, in whole or in part: (A) the order identifier assigned to the Order by the Reporting Member, (B) the member identification symbol assigned by the Association to the Reporting Member, (C) the date the Order was first originated or received by the Reporting Member, (D) the Reporting Member's number assigned for purposes of identifying transaction data in ACT, (E) the designation of the Order as fully or partially executed, (F) the number of shares to which a partial execution applies and the number of unexecuted shares remaining, (G) an identification of each registered person who executed the Order, and (H) the date and time of execution.

#### 6950. Order Data Transmission Requirements

##### (a) General Requirement

All applicable order information required to be recorded under Rule 6940 shall be transmitted to the Order Audit System by each Reporting Member or by a Reporting Agent pursuant to an agreement described by paragraph (c) of this Rule.

##### (b) Method of Transmitting Data

(1) Order information shall be transmitted in electronic form, as may be prescribed by the Association from time to time, to a receiving location designated by the Association.

(2) Each Reporting Member shall transmit to the Order Audit System a report containing each applicable item of Order information identified in Rule 6940(b) whenever an Order is originated, received, executed, canceled, modified, or transmitted to another member or another department within the member. Each report shall be transmitted on the day such event occurred, or with respect to any such information that is not available on such day, on the day that such information first becomes available. Order information reports may be aggregated into one or more transmissions, during such business hours as may be prescribed by the Association.

##### (c) Reporting Agent Agreements

(1) Any Reporting Member may enter into an agreement with a Reporting Agent pursuant to which the Reporting Agent agrees to fulfill the obligations of such Reporting Member under this Rule. Any such agreement shall be evidenced in writing, which shall specify the respective functions and responsibilities of each party to the agreement that are

required to effect full compliance with the requirements of this Rule.

(2) All written documents evidencing an agreement described in paragraph (1) shall be maintained by each party to the agreement.

(3) Each Reporting Member remains primarily responsible for compliance with the requirements of this rule, notwithstanding the existence of an agreement described in this paragraph.

#### 6960. Violation of Order Audit System Rules

Failure of a member or person associated with a member to comply with any of the rules or requirements of Rule 6910 through Rule 6970 may be considered conduct that is inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of Rule 2110.

##### 6970. Effective Date

The requirements of the Order Audit System shall be effective in accordance with the following schedule:

(a) The requirements of Rule 6930 shall be effective on February 2, 1998.

(b) The requirements of the Order Audit System shall be effective on August 8, 1998 with respect to Orders that are captured by members in electronic form upon or promptly after receipt ("electronic order").

(c) The requirements of the Order Audit System shall be effective on January 1, 1999 for Orders other than electronic Orders that: (i) are received at the trading department of market makers in the securities that are the subject of the Orders, and (ii) are executed on the same day on which they are received, provided that only information items (1), (2), (3), (6) through (17), (19), (22), (23), (24), and (25) (other than 25(G)), specified in Rule 6940(b) shall be required to be recorded and reported with respect to such Orders.

(d) The requirements of the Order Audit System shall be effective on January 31, 2000 in all respects with respect to all Orders.

(e) The requirements of Rule 3110(c) shall be effective from January 1, 1999 to January 31, 2000.

## 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. NASD Regulation 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

#### a. Summary

The NASDR is proposing a series of rule changes ("Proposed Rule") to create a new order audit trail system ("Order Audit System") that would impose obligations on member firms to retain in electronic form and to report to NASDR certain items of information with respect to orders received by members relating to equity securities traded in Nasdaq. This information would be integrated with transaction data currently reported by members through ACT and quotation information disseminated by members. In addition, related to the operation of the Order Audit System, the Proposed Rules would require that member firms maintain synchronization of their member clocks with a specific time source designated by the Association.

The Order Audit System will be operated by NASDR as the operating subsidiary of the Association that is responsible for regulating member firms and conducting surveillance of the Nasdaq Market. NASDR will obtain ACT transaction data from, which is responsible for receiving ACT transaction information, on a daily basis for purposes of constructing an integrated audit trail of transaction and order data, and members will be required to transmit ACT identifying information to the Order Audit System. The combination of order data received by the Order Audit System and ACT data is discussed further below.

The Order Audit System would provide a substantially enhanced body of information regarding orders and transactions that would improve the NASDR's ability to conduct surveillance investigations of member firms for violations of Association rules. In addition, the implementation of the Order Audit System would directly fulfill one of the undertakings contained in the order issued by the SEC relating to the effectuation of the Association's regulatory responsibilities.<sup>2</sup> Pursuant to the SEC Order, the Association agreed to undertake to design and implement by August 8, 1998 (or as specified by further order of the Commission) an

<sup>2</sup> See, In the Matter of National Association of Securities Dealers, Inc., SEC Release No. 34-37538 (August 8, 1996); Administrative Proceeding File No. 3-9056 ("SEC Order").

audit trail sufficient to enable the Association to reconstruct markets promptly, conduct efficient surveillance and enforce its rules. The audit trail is required, subject to the Commission's approval, at a minimum, to (a) provide an accurate time-sequenced record of orders and transactions, beginning with the receipt of an order at the first point of contact between the broker-dealer and the customer or counterparty and further documenting the life of the order through the process of execution, and (b) provide for market-wide synchronization of clocks utilized in connection with the audit trail.

In general, the Proposed Rules would require that each member receiving an order relating to equity securities traded in the Market must electronically capture specified information related to the order and electronically transmit this information to the Order Audit System. These requirements would apply both to orders originated by customers and to proprietary orders originated by a department of a member firm and sent to its trading desk or to another member for execution. Further, for both a customer order and an order originated by a department, or desk, of a member firm, the requirement to capture and transmit information would apply whenever the order is passed to another department of the same firm.

Order information would be required to be submitted in either single or multiple electronic file transmissions on the same day that the order, or the specific information pertaining to the order, was received, originated, canceled, modified, transmitted, or executed. Where information containing a particular order is not complete or changes, because for example, the order is only partially executed on the day that it is received, but the order remains outstanding, or if the order is canceled, the additional information would be required to be transmitted on the day that the information first becomes available.

The Proposed Rules contain a special provision that allows a firm to enter into an arrangement with another member pursuant to which such member agrees to report order information on its behalf, in the same way that firms now contract with other members to report transaction data to ACT. In each case, however, the member that actually receives or originates the order would remain primarily responsible for fulfilling each of its obligations under the Proposed Rules.

In addition to the recording and transmission requirements, the Proposed Rules would require that members synchronize their business

clocks used for purposes of recording order or trade data to the Association with reference to a single time designated by the Association for this purpose, and that they adopt such procedures as may be necessary to maintain such synchronization during each trading day. This provision is designed to ensure that the times of various events that are reported pursuant to the Proposed Rules are reported in conjunction with a single and verifiable reference point.

The implementation schedule for the Proposed Rules would require all members to synchronize their business clocks that record times for regulatory purposes pursuant to Rule 6930 by February 2, 1998. The implementation schedule for the Proposed Rules contemplates that the requirements would apply to all orders that are received electronically, or captured in electronic form promptly after receipt, as of August 8, 1998. In addition, the Proposed Rules would apply January 1, 1999, a slightly later implementation date, to all orders in an equity security that are received by other than electronic means at the trading desk of a market maker in the security and that are executed on the same day on which they are received. With respect to this group of orders, however, the information required to be electronically recorded and transmitted to the Order Audit System is limited to items of information that are expected to be readily available at the trading desk. These items are enumerated in Rule 6970(c). The proposed implementation schedule would be completed on January 31, 2000, when the Proposed Rules would apply in all respects to all Orders.

Based on extensive consultation with members and regulators and on its own analysis, NASDR believes that, given the substantial initial investments that will be required by member firms to comply with the proposed requirements, and in light of other substantial systems costs that members have been and will be required to make during the next several years, it is appropriate to limit the initial application of the rules. Where members already are capturing order information electronically, the proposal will require that members alter their data processing systems as necessary in order to permit recording all the items required by the rules and to transmit this information to the Order Audit System.

The proposed January 1, 1999 inclusion of orders received by market makers at their trading desks is based on the critical role that market makers play in the market for Nasdaq securities, and

the important regulatory interest in assuring that the processing of orders by market makers complies with all applicable requirements. The limitation of the elements that must be recorded recognizes, however, that some information may not be readily available at the trading desk, and that an orderly and efficient implementation of the Order Audit System with respect to market maker telephone orders could be impeded by immediately requiring the manual recordation of all the data elements. In connection with market maker orders, one item of information, the identity of the trader who executes a market maker order, is not being required initially because of the additional time that would be required to manually input long identification numbers in connection with each transaction. However, a temporary amendment to Rule 3110 is being proposed that would require that the member record the identity of traders executing orders sent to market maker trading desks. This provision would ensure that information that could be important for regulatory purposes will be available to regulators upon request.

The limitation to orders that are received and executed on the same day reflects the expectation that compliance burdens will be relatively less when members are contemporaneously being required to provide transaction reports related to the same security following the availability of such additional information.

Rule 6970 proposes to apply the Order Audit System requirements on January 31, 2000 in all respects to all orders. NASDR solicits comment on this issue, based on system changes or other factors that would apply to members that do not presently maintain systems for electronic receipt and routing, and on any associated cost estimates.

#### b. Section by Section Discussion

**Rule 6910—Definitions.** Rule 6910 prescribes the definitions that apply to each of the other rules pertaining to the Order Audit System. Paragraph (a) provides that, unless otherwise defined, terms have the same meanings assigned to them in the By-Laws and other rules of the Association.

The term *Order* is defined by paragraph (f) to include any oral, written, or electronic instruction to effect a transaction in a Nasdaq equity security that is either originated by a member or received by a member for handling or execution. The definition is not intended to apply to communications that involve only "indications of interest" or discussions that are prefatory to the determination

of the sender of the order to instruct the member to execute or attempt to execute a transaction. At the same time, because the definition includes orders that are received for "handling," it would include instructions that may not be capable of being executed immediately or fully executed at one time, but may instead require negotiation with market makers or other firms, or may require execution in a series of separate transactions.

The definition applies to orders that are received from public customers and from other broker-dealers. It would include orders originated by affiliates of a member and sent to that member, including for example, an order originated by a registered investment company sent to its affiliated broker-dealer. In addition, it applies to orders that are originated by one department of a member and transmitted to another department of the member, e.g., an order that is originated by an institutional sales desk and transmitted to a trading desk or sent to another member. The definition would include, among others, all orders that member firms are obligated to execute under the terms of the "Firm Quote Rule" (Rule 11Ac1-1 under the Securities Exchange Act of 1934). The term expressly would not include, however, a proprietary transaction originated by a trading desk in the ordinary course of a member's market making activities.

The definition of *Reporting Member* in paragraph (j) describes the members who are subject to the requirements simply as members that receive or originate Orders. The definition includes members who receive Orders from public customers as well as from other members. In conjunction with the definition of "Order", this definition makes clear that all Orders from public customers, from other securities firms, and those that are originated in-house are subject to the requirements of the Proposed Rules.

Paragraph (e) defines the term *Index Arbitrage Trade* to refer to an arbitrage trading strategy involving the purchase or sale of a group of securities in conjunction with the actual or intended purchase or sale of one or more cash-settled options, futures contracts on stock indexes, or options on such futures contracts in an attempt to profit by the price difference. The term *Program Trade* in paragraph (h) is defined to refer to a trading strategy involving the related purchase or sale of a group of 15 or more securities with a market value of at least \$1 million. Both definitions generally track the related definitions in, and are further defined by reference to, New York Stock

Exchange Rule 80A. The definitions are relevant to the information recording requirements of Rule 6940, described below, that pertain to Orders that are part of an index arbitrage or program trade.

The term *Report Agent* is defined to include members that agree with other members to fulfill the reporting obligations of Rule 6950 on the other member's behalf and is specifically relevant to Rule 6950(c), discussed further below, which permits the use of such agreements, subject to certain conditions.

**Rule 6930—Synchronization of member business clocks.** The reliability and usefulness of the Order Audit System will depend on the ability of NASDR to require that the business clocks of member firms that are required to record audit trail data are appropriately synchronized. The requirement for such synchronization is a specified element of the undertakings contained in the SEC Order. Because the determination of whether members have complied with various rules and standards to which they are subject, including among others, best execution obligations, compliance with the obligation to honor firm quotes, and prohibitions on frontrunning customer orders, depends critically on establishing with reasonable confidence the time at which Order information is received, the synchronization requirement is a necessary and integral part of the Order Audit System. This requirement is important both with respect to synchronization of clocks within a member firm as well as with respect to market-wide synchronization across member firms.

Proposed Rule 6930 provides that each member shall synchronize its business clocks that are used for purposes of recording and reporting Order, transaction, or related data required by the By-Laws or other rules of the Association, with reference to a specific time source as designated by the Association. The rule further requires that each member firm maintain the synchronization of such clocks in conformity with such procedures as the Association may prescribe. Accordingly, the rule would apply the synchronization requirement to recording and reporting of information to the Order Audit System, to ACT, or to other requirements that the Association may adopt pertaining to transmission of Order and transaction data.

Presently, members and electronic communication networks and service bureaus use a variety of methods for synchronizing business clocks. These

methods range from manual synchronization based on time derived from local time sources to subscription to commercial providers of satellite services that programmatically update computers with accurate time. Accordingly, the degree of accuracy of recorded times may vary significantly among member firms.

In implementing this requirement, NASDR would designate, through Notices to Members or other appropriate means, as appropriate sources one or more satellite time scales that are generally recognized and widely followed for commercial purposes. For example, the National Institute of Standards and Technology (NIST) and U.S. Naval Observatory maintain time scales that are essentially equivalent, i.e., they are maintained within a very small fraction of a second of each other.<sup>3</sup> The designation of reference sources such as these should provide to both members and investors an efficient means for confirming the accuracy and reliability of business clocks that are used for trading and reporting purposes.<sup>4</sup>

The obligation to maintain the synchronization of business clocks will be ongoing. It is intended that any policies and procedures adopted by NASDR in this respect will require that the accuracy of clocks be resynchronized on at least a daily basis. NASDR also anticipates that compliance examinations would include a review for the existence of adequate procedures and checks to fulfill this obligation, as well as testing the degree of accuracy of clocks that are used for providing audit trail information against the time reference that is designated by NASDR.

Pursuant to the proposed rule, each such recorded time would need to be synchronized with a designated time and recorded in hours, minutes, and seconds. NASDR will provide further guidance, prior to the effective date of the Proposed Rules, as to the specific standard of accuracy that will need to be maintained, given existing technology and the requirement that times be recorded in seconds. NASDR expects to review carefully member firms' compliance with these requirements,

<sup>3</sup> See Proceedings of the Institute of Electrical and Electronics Engineers, *Time and Frequency Information in Telecommunications Systems Standardized by Federal Standard 1002A*, Volume 79, No. 7 (July 1991).

<sup>4</sup> For example, a member or investor can obtain through the Internet information concerning the NIST's Automated Computer Time Service. This service provides to users the ability to synchronize business clocks programmatically with time maintained by NIST. The NIST Website can be accessed at <http://www.bldrdoc.gov/timefreq/service/acts.htm>.

given the importance of accurate time recordation to the integrated audit trail.

As discussed below, the proposed effective date of the synchronization requirement is February 2, 1998, prior to the effectiveness of the other Proposed Rules.

**Rule 6940—Recording of Order information.** Rule 6940 prescribes the specific items of Order data that are required to be recorded by each Reporting Member. Paragraph (a)(1)(A) specifically requires that each Reporting Member shall, immediately following receipt of origination of an Order, record each applicable item of information listed in paragraph (b) of the rule. In addition, where specified information is not available at the time that the Order is received, or if information that has been received changes, the rule would require that such information be immediately recorded when it is received. For example, if the Order is canceled, this information would necessarily need to be separately recorded when received.

Paragraph (a)(1)(B) provides that when a member transmits an Order to another member, or from one department to another, each item of information described in paragraph (b) that applies with respect to such transmission must be recorded.

Under paragraph (a)(2), each required record of the time of an event, including the time of receipt or transmission within a member or to another member, must be expressed in terms of hours, minutes, and seconds. The recorded times will be subject to the synchronization requirements, described above.

Finally, pursuant to paragraph (a)(3), each item of information that is not initially recorded electronically, or that is not recorded electronically in an appropriate form, must be recorded in such electronic form as is prescribed by the Association, before the end of the business day on which the information is received. The rule would not preclude recording Order information by paper means, provided that the information is translated into electronic form intra-day in order to permit the daily reporting of this information to the Order Audit System. In many cases, efficiencies may dictate initially recording Order information in electronic form at the point of receipt, but the rule does not mandate this method.

As noted, the rule would require that specified information that pertains to each Order be recorded "immediately" following receipt. The rule does not attempt to specify a time limit between receipt and recordation, since the factor

may differ marginally based on the volume or Orders that are received at any one time, and whether a particular Order is communicated electronically or orally. Where Order information is not received and processed electronically, it is expected that the time required will be defined by reference to the time practically required to react to the information received and either enter it into an electronic database or manually record it for later translation into electronic form. Whether an Order is received electronically or manually, members would be required to accurately time stamp three Orders on receipt to comply with the requirements of the Rule. The rule would not permit the "bunching" or aggregating of Orders for these purposes but instead would require that information pertaining to each Order be entered sequentially as it is received.

Paragraph (b) of the rule lists the various items of information that are required to be recorded under the rule. We note that this list does not necessarily reflect all of the information that may prove to be necessary or useful for audit trial purposes, and that other or additional items of information could be sought after NASDR has acquired experience with the Order Audit System. For purposes of understanding the different recording requirements in various situations, the following description categories the recording requirements in the following ways: basic identifying information pertaining to the Order itself, or to members, departments or individuals who handle the Order; the terms of the Order as specified by the customer; other information related to the Order; information that is required to be recorded whenever an Order is routed within a member or is passed from one member or another; information that is related to modifications or cancellations; and information pertaining to a complete a partial execution of an Order.

**Identifying information.** At the point that an Order is received or originated, certain identifying information is required to be recorded, including a unique order identifier assigned by the member firm, the member identification symbol assigned by the Association to the member, and the date on which the Order was received or originated. The combination of these three elements will uniquely identify an Order from all other Orders received or originated by any member on any day. In assigning order identifies, it is intended that members may use identification numbering methods that they presently

employ, consistent with any specific requirements imposed by NASDR.

Additional identifying information includes the identification symbol assigned by the Association to the security issue; an identification of the department and any registered person who receives an Order from a customer; where an Order is originated by a member firm, an identification of the department where the Order originated; and where a member is using a Reporting Agent to help fulfill its reporting obligations under Rule 6950, the member identification symbol assigned by the Association to that firm. As noted below, additional information will be required to be recorded when a member routes or passes an Order within the firm or to another member.

With respect to departments and individuals who receive Orders, the rule limits coverage to persons who receive Orders directly from customers, rather than from other members. Rule 6910 defines the term "customer" to exclude members or other broker-dealer firms. This formulation results from the significant compliance burden that could result from identification of each individual person who receives an Order from any source, and the relatively greater importance for surveillance purposes attached to identifying persons who receive communications from public customers with respect to their Orders. NASDR specifically solicits comment on the appropriateness of this limitation.

In addition, the rule requires identification of persons who are registered with the Association, rather than extending the coverage to "associated persons."<sup>5</sup> Because all persons handling orders relating to securities are required to be registered with the Association, we believe that this requirement should not create a significant problem for members. In addition, because all registered persons are assigned a number by the Association's Central Registration Depository ("CRD"), and many members may use these numbers currently for purposes of identifying registered persons in their data processing systems, we believe that the limitation to registered persons will significantly lessen the compliance burdens that would be imposed.

**Terms of the Order.** The following items of information will be required with respect to the terms of the Order that are specified by the party placing the Order: the number of shares to which the Order applies; designation as

<sup>5</sup> See NASD Bylaws, Article I(q); 15 U.S.C. § 78c(a)(18).

a buy or sell order; designation as a market order, limit order, stop order or stop limit order; any limit or stop price prescribed in the Order; designation as a short sale order; designation of the time limit during which the Order is to remain in force; any special handling requests contained in the Order; any minimum number of shares required for execution; and the date on which the Order expires.

Prior to the effective date of the Proposed Rules, NASDR will prescribe the types of special handling requests that would need to be recorded. The order type designations, *e.g.*, market or limit order, are not intended to be exclusive, and other designations of Order types that may be prescribed by NASDR based on current commercial practice may also be required. Each such item of information is required to be recorded at the time the Order is placed. As described below, where a customer modifies an existing Order, the modification is treated as a new Order, and the modified information is required to be recorded when the modification is received.

*Other information related to the Order.* Other information directly related to the Order itself includes: the date and time on which the Order was received; the type of customer account for which the Order is placed; whether the Order is related to a Program Trade or Index Arbitrage Trade<sup>6</sup>; and any special instructions required by the customer under the Commission's Order Handling Rules.

As noted above, recording of the date and time on which the Order was received is of paramount importance for reviewing compliance with a number of regulatory requirements, because of the importance of the timing of market developments and activities by the member in relation to Order receipt time. The time of receipt must be accurately recorded, with reference to the synchronized time that is required to be maintained under Rule 6930. For purposes of defining the type of account for which the Order was placed, the rule describes four categories: retail, wholesale, employee, or proprietary. A separate designation for "institutional" accounts has not been included because of our understanding that firm record keeping procedures do not make use of this classification for most purposes, and there is no clear test that is applied for purposes of differentiating "institutional" from other public

customer accounts. NASDR solicits comment on whether the prescribed categories are appropriate and useful.

The Rule would require identification of situations in which a customer provides special instructions with respect to display of limit orders, pursuant to Rule 11Ac1-4(c) under the Exchange Act. That rule expressly excepts from the requirement to display limit orders: (i) block orders, unless customers request that they be displayed; and (ii) those situations in which customers request that limit orders not be displayed.

*Orders routed within a firm.* When an Order is routed to another department of the member for execution or for other purposes, item 20 of Rule 6940 prescribes information that is required with respect to this event. Specifically, the information required includes the order identifier assigned to the Order by the member, the member identification symbol, the date the Order was first received or originated by the member, an identification of the department to which the Order was transmitted, and the date and time the Order was received by that department.

*Orders routed to another firm.* When an Order is sent to another firm, for execution or any other purpose, items 21 and 22 prescribe the information that is required on the part of both the sending and receiving members in order to accurately track the Order. With respect to the sending firm, the following elements are required in order for the Order Audit System to track the Order: the unique order identifier assigned by that firm; the firm's member identification symbol; the date on which the Order was originally received or originated by the member; the date and time the Order is transmitted; the identification symbol of the member to which the Order is transmitted; and the number of shares that are routed. The requirement to record the member identification symbol assigned by the Association to the receiving firm will require that each Reporting Member retain a list of symbols assigned to all members by the Association for electronic reporting purposes.

Where an Order is transmitted to another member, the receiving firm is required to capture all of the elements prescribed in Rule 6940(b) that apply whenever an Order is received. For example, it is required to assign its own unique order identifier and to record all the other terms pertaining to the Order, regardless of whether the Order is originated by the transmitting member or by a third party. In addition to these requirements, other elements pertaining to the sending firm are required.

Specifically, the receiving firm will be required to record the unique order identifier assigned by the sending firm, that firm's member identification symbol, and the date the Order was originally received or originated by the transmitting firm. In aggregate, this information will be used to link the Order from firm to firm for purposes of accurately tracking each Order that is passed. NASDR requests comment as to the burdens involved in requiring each receiving firm to record this identifying information with respect to each telephoned Order between members.

*Modifications and cancellations.* Whenever a member modifies the terms of an Order that it has originated, or receives a modification of terms from a customer or from another member, the Order Audit System will treat the modification effectively as a cancellation of the original Order and its replacement by the modified Order. Accordingly, in this circumstance, all of the other information items prescribed by the rule, including a new order identifier, would need to be recorded as if the Order was modified were originated or received at the time of the modification. In addition, to permit the linkage by the Order Audit System of this "new" Order to the previous one, item 23 requires that the following elements be recorded: the order identifier that was assigned prior to the modification; the date and time the modification was originated or received; and the date the original Order was first originated or received by the member.

In the case of a "true" cancellation of an existing Order, whether it is a total or partial cancellation, the following elements are required to be recorded: the order identifier assigned by the Reporting Member; its member identification symbol; the date the Order was first originated or received by the Reporting Member; the date and time the cancellation was originated or received; if the open balance of an Order is canceled after a partial execution, the number of shares canceled; and whether or not the Order was canceled at the instruction of the Reporting Member, or a customer.

*Executions.* One of the most critical functions of the Order Audit System will be to link information reported to the Order Audit System with transaction data that members are now required to report to ACT. This linkage is central to the construction of a wholly integrated audit trail that incorporates the new requirements with existing information for purposes of tracking each Order from the time that it arises until it is executed, modified, or canceled. This linkage is accomplished

<sup>6</sup> Transaction data for trades that are part of a program trade or index arbitrage strategy is required by the New York Stock Exchange to be transmitted to ACT with respect to securities listed on that exchange.



principally by requiring that the executing member firm record, and report to the Order Audit System under Rule 6950, the Branch Sequence number included in each report to ACT for a trade associated with the Order. The member firm reporting to ACT must include, in the Branch Sequence field of the ACT report, and Order identifier that is unique for that firm throughout the reporting day. In addition, for purposes of linking transaction and order data, members will be required to record and report the unique order identifier assigned by the firm, the firm's member identification symbol; and the date the Order was first originated or received.

In addition to these elements, item 25 of Rule 6940(b) prescribes the following elements: a designation of the Order as fully or partially executed; the number of shares to which a partial execution applies and the number of unexecuted shares remaining; an identification of each registered person who executed the Order; and the date and time of execution. Because the rule would prescribe identification of each registered person who receives an Order from a customer (see "Identifying Information" above), in tandem with this requirement, the Order Audit System will be able to identify each individual involved at the inception of the receipt of an Order from a customer, and each individual who actually executes every Order. As noted above, the identity of traders who execute non-electronic Orders at market maker trading desks is not being required, but instead NASDR is proposing an amendment to Rule 3110 to require that this identifying information be recorded in connection with each such Order that is executed so that the information will be available for regulatory purposes. The requirements of the proposed amendment to Rule 3110 will be effective only from January 1, 1999 until January 31, 2000, at which time the identity of all registered persons who execute an Order will be required to be recorded with the other information items listed under Rule 6940(b)(25).

**Rule 6950—Order data transmission requirements.** Rule 6950 prescribes the requirements that apply to transmitting to the Order Audit System information that is recorded under rule 6940. Paragraph (a) states the general requirement that all applicable information that is required to be recorded with regard to a particular Order must be transmitted to the Order Audit System by the Reporting Member, or by a Reporting Agent that agrees to send reports on behalf of the Recording Member.

Paragraph (b) sets forth the means by which a data is required to be transmitted. Subparagraph (1) provides that all Order information shall be transmitted in electronic form, as may be prescribed by the Association from time to time, to a receiving location designated by the Association. Compliance with the reporting requirements of the Proposed Rules generally will require member firms to modify existing systems to permit efficient and timely transmission of information, or in some cases, to create new data capturing and reporting systems. Based on the final requirements contained in the Proposed Rules following their approval by the Commission, NASDR will consult with and provide notices to members as necessary in order to further clarify the changes that will be required and to assist member firms in making these modifications in the most cost-efficient way possible. In circumstances where the cost of such changes appears to be disproportionate based on the size of the firm or the nature of its trading activity, paragraph (c) as discussed below would permit the reporting responsibility to be assumed by another member that maintains the technological capability to perform this function. NASDR specifically solicits comment from member firms on this issue, to the extent that they have information that would permit an estimate of the costs that would be required based on the configuration of the Order Audit system defined by the Proposed Rules.

Subparagraph (b)(2) prescribes other requirements for transmitting reports. Each Reporting Member would be required to transmit, on the day that the Order is received, originated, canceled, modified, transmitted, or executed, each applicable item of Order data required to be recorded in electronic form under Rule 6940 that is available on that day, including information pertaining to modifications, cancellations or executions that occur on that day. Where information that initially is recorded changes later in the same day because, for example, a customer determines to modify the terms of the Order due to changing market conditions, consistent with the requirements noted above (see "Modifications and Cancellations"), the member would report the modified Order as if it were a new Order, along with the other information required to be recorded when Orders are modified.

With respect to Orders that are not fully executed on that day that they are received, any additional information pertaining to the Order, including execution information, would be

transmitted on the day that it first becomes available. The rule provides that Order reports will be transmitted in either single or multiple files during such business hours as may be prescribed by the Association. This provision is intended to provide members with the flexibility to provide reports in the most time and cost-efficient way. Particularly during periods of heavy volume, it may be desirable to transmit groups of report at various intervals during the course of the day. In addition, this flexibility is intended to avoid delays or other problems in processing information by the Order Audit System that could be caused by the transmission of reports by member firms at or near the same point in time.

Based on further development of the Order Audit System and determinations relating to system capacity and other factors, NASDR will prescribe the hours during which information may be transmitted. The prescribed hours likely will extend past the end of the trading day. The proposal contemplates that all Order information, along with corresponding ACT data that has been integrated with such information, will be available to NASDR staff at the beginning of the trading day following the day on which the information has been transmitted.

Paragraph (c) provides the conditions to use agreements between members and Reporting Agents, by which these agents agree to fulfill reporting obligations under the Rule. Each agreement is required to be set forth in writing, specifying the respective functions and responsibilities of each party. Further, each agreement is required to be maintained by each party. Subparagraph (c)(3) provides that the Reporting Member in each case remains primarily responsible for compliance with the reporting obligations. It is expected therefore that each member that is a party to such an agreement will exercise appropriate diligence to insure that the Reporting Agent is discharging the member's obligations.

NASDR believes that the ability to rely on reporting relations is important to the practicability of the Order Audit System from the standpoint of many small and medium-size firms. Presently, clearing relationships often include the responsibility to report trade information to ACT on behalf of member firms. It is intended that these existing relationships can also be used for purposes of Order Audit System reports. NASDR specifically solicits comment on costs or difficulties that could be involved in amendment existing clearing and reporting



relationships to encompass reporting obligations under Rule 6950.

**Rule 6960—Violation of order audit system rules.** Rule 6960 provides that failure to comply with any of the requirements set forth in the Proposed Rules may be considered conduct that is inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of NASD Rule 2110. This provision emphasizes the importance of the Order Audit System to the regulatory mission of the Association and NASDR. NASDR believes that violations of the Proposed Rules that may be deemed to be violations of Rule 2110 of the Conduct Rules would include patterns of persistent or repeated violations, or submissions of inaccurate reports. Ordinarily, cases of isolated or inadvertent violations would not be considered to be violations of Rule 2110 but could be subject to specified fines imposed in an expedited process. In this regard, NASDR specifically solicits comment on whether the Proposed Rules should be included among the rules subject to the disciplinary penalties and procedures contained Rule 9217 and IM-9217 of the NASD Code of Procedure.<sup>7</sup>

**Rule 6970—Effective date.** NASDR is proposing that the requirements of Rule 6930 be effective for all members on February 2, 1998. This proposed effective date pre-dates by approximately six months the proposed application to certain Orders of the other Proposed Rules. Because the synchronization requirement is designed to ensure the accuracy of times of events that are recorded for regulatory purposes, including under current regulations, the requirement has a purpose that is broader than the accurate recordation of times pursuant to the Proposed Rules. Accordingly, NASDR preliminarily believes that it may be appropriate to implement this requirement as soon as is feasible. In addition, an earlier implementation of the requirement could provide NASDR with experience that could be useful in preparing for the implementation of the Order Audit System. NASDR specifically solicits comment on the feasibility of this implementation date, based on any necessary enhancements to existing systems that would be required. In particular, comments should address the extent to which manual or "punch" clocks current are in use for purposes of complying with regulatory requirements, and the extent

to which business clocks now record in seconds, or the timetable for any existing plans to upgrade these clocks.

Because of the substantial compliance burdens that will be associated with systems and other changes in order to permit member firms to record and report all the information that would be required under the Proposed Rules, as noted above, NASDR is proposing to apply the requirements on August 8, 1998 only to Orders that are captured by members in electronic form upon or promptly after receipt ("electronic orders"). Where Orders presently are communicated by telephone or some other means but are routinely entered into an electronic data base as soon as they are received, NASDR preliminarily believes that it is appropriate to treat these Orders in the same way as if they were transmitted directly in electronic form. NASDR solicits comment on whether this treatment is appropriate.

In addition, a January 1, 1999 implementation date would apply to Orders that are not communicated or routinely entered electronically ("non-electronic orders"), where they are received at the trading desk by members that are market makers in the subject securities. Under this provision, only certain information items initially would be required to be recorded and reported to the Order Audit System. These information items in general correspond to those items that are expected to be generally available at the trading desk at the time that Orders are received. Specifically, the required items include: the order identifier assigned to the Order by the market maker; the date and time on which the Order was originated or received; the member identification symbol assigned by the Association; the identification of the Reporting Member's Reporting Agent, where applicable; the symbol assigned by the Association to the securities that are the subject of the Order; where applicable, the designation of the order as a short sale; whether the Order is to buy or sell; the quantity of shares; the designation of the time in force that applies to the Order; the expiration date; the type of account for which the Order is submitted; any request by a customer that a limit order not be displayed or that a block order be displayed pursuant to Rule 11Ac1-4(c) of the Exchange Act; the designation of the type of Order (market, limit, stop, or stop limit); the designation of any stop or limit price; any designation of a minimum number of shares that must be executed; any special handling instructions; where a member receives an Order from another member, the order identifier assigned to

the Order by the member that transmits the Order, the member identification symbol assigned by the Association to the member that transmits the Order, and the date the Order was first originated or received by the member that transmits the Order; and other relevant information when the order is executed, canceled, modified or transmitted to another member. As noted above, data concerning all Orders that are not received electronically will be required to be captured manually immediately after receipt and recorded intra-day in electronic form.

NASDR is not proposing to require initially that the identification of each trader who executes non-electronic Orders received at the trading desk of a market maker be recorded. However, NASDR is proposing an amendment to Rule 3110 to require that this item be recorded in some form, so that this information can be available for regulatory purposes on request.

As noted above, the proposed inclusion of these Orders in the Order Audit System by January 1, 1999 reflects the important role that market makers play in the market for Nasdaq securities and the paramount regulatory and surveillance interest in assuring that market makers comply with all of their obligations. At the same time, the proposal to reduce the number of elements that must be captured initially by market makers when receiving telephone or other non-electronic orders recognizes that requiring the manual transcription of all data elements, including those that may not be immediately available to a registered person at the trading desk, in a form that can be reported to the Order Audit System could impede an orderly and efficient implementation of the Order Audit System. In particular, this provision recognizes the unique nature of market maker trading desks, in terms of the volume of Orders processed and the attendant difficulties that could result in attempting to record and report the specified information during periods of high volume and changing market conditions.

Following finalization of the system configuration and requirements based on Commission approval, substantial systems development and testing will be required prior to August 8, 1998. NASDR may seek a representative group of member firms to participate in early testing and in a voluntary pilot program in advance of the effective date in order to identify problems and gain insight into reporting patterns and volumes. NASDR will provide periodic notices to its members prior to the effective date

<sup>7</sup> See also Rule 476A and Supplementary Material of the New York Stock Exchange Guide for comparable rules of the New York Stock Exchange.

with regard to these development activities.

Rule 6970 propose to apply the Order Audit System requirements on January 31, 2000 to all Orders. Accordingly, non-electronic Orders, whether recorded at a market maker trading desk or at another location would be fully subject to all of the recording and reporting requirements of the Proposed Rules on such date. NASDR solicits comment on this issue and on the implementation schedule generally, based on system changes or other factors that would apply to members that do not presently maintain systems for electronic receipt and routing, and on any associated cost estimates.

NASDR believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act<sup>8</sup> in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest by creating an Order Audit System that would provide a substantially enhanced body of information regarding orders and transactions that would improve the NASDR's ability to conduct surveillance and investigations of member firms for violations of Association rules. In addition, the implementation of the Order Audit System would directly fulfill one of the undertakings contained in the SEC Order relating to the effectuation of the Association's regulatory responsibilities. Pursuant to the SEC Order, the Association agreed to undertake to design and implement by August 8, 1998 (or as specified by further Order of the Commission) an audit trail sufficient to enable the Association to reconstruct markets promptly, conduct efficient surveillance and enforce its rules.

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

NASD Regulation 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, as amended.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

In the process of developing the proposed rule change, NASDR consulted generally with industry

representatives and received a number of comment letters in connection with this consultation. Such comment letters are available from NASDR upon request.

### **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 the self-regulatory organization 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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 will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR-NASD-97-56 and should be submitted by September 26, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 97-23602 Filed 9-4-97; 8:45 am]

BILLING CODE 8010-01-M

## **DEPARTMENT OF TRANSPORTATION**

### **Office of the Secretary**

#### **Applications of Custom Air Transport, Inc., for Certificate Authority**

**AGENCY:** Department of Transportation.  
**ACTION:** Notice of order to show cause (Order 97-8-29) Dockets OST-97-2255 and OST-97-2256.

**SUMMARY:** The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Custom Air Transport, Inc., fit, willing, and able, and awarding it certificates of public convenience and necessity to engage in interstate and foreign charter air transportation of persons, property, and mail.

**DATES:** Persons wishing to file objections should do so no later than September 15, 1997.

**ADDRESSES:** Objections and answers to objections should be filed in Dockets OST-97-2255 and OST-97-2256 and addressed to Department of Transportation Dockets, U.S. Department of Transportation, 400 Seventh Street, S.W., Rm. PL-401, Washington, D.C. 20590, and should be served upon the parties listed in Attachment A to the order.

**FOR FURTHER INFORMATION CONTACT:** Ms. Carol A. Woods, Air Carrier Fitness Division (X-56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, DC 20590, (202) 366-2340.

Dated: August 29, 1997.

**Charles A. Hunnicutt,**

*Assistant Secretary for Aviation and International Affairs.*

[FR Doc. 97-23511 Filed 9-4-97; 8:45 am]

BILLING CODE 4910-62-P

## **DEPARTMENT OF TRANSPORTATION**

#### **Privacy Act of 1974; Notice To Amend System of Records To Include New Routine Uses**

**AGENCY:** Department of Transportation.  
**ACTION:** Notice to amend system of records to include new routine uses.

**SUMMARY:** In accordance with the Privacy Act (5 U.S.C. 552a(e)(11)), the Department of Transportation is issuing notice of our intent to amend the system of records entitled DOT/ALL 11, Integrated Personnel and Payroll System (IPPS) to include new routine uses. We invite public comment on this publication.

**EFFECTIVE DATE:** October 6, 1997.

<sup>8</sup> 15 U.S.C. § 78o-3.

<sup>9</sup> 17 CFR 200.30-3(a)(12).