

Nasdaq is concerned that some members have abused the appeals process by appealing all decisions in which they are involved regardless of merit or the value of shares at issue. During December 2006 and January 2007, five firms were responsible for 44% of all appeals. Two appeals were for odd lot amounts, including one appeal for just 50 shares. Of the appeals during this two-month period, 77% of appeals were upheld by the MORC and 23% resulted in trade adjustments. These statistics suggest that parties are overusing and abusing the appellate system because there is no downside risk. A number of the appeals involve trades that do not meet the numerical thresholds and other factors used in adjudicating clearly erroneous filings set forth in IM-11890-4 and IM-11890-5. As a result, the MORC is often serving as a redundant decision maker in cases where the outcome is not legitimately in question. This is not the role Nasdaq intended when it established the appeals process using the MORC.

In order to reduce the number of frivolous appeals and to preserve Nasdaq's ability to attract qualified persons to serve on the MORC, Nasdaq is proposing a modest fee of \$500.00 that will be levied only in cases where the MORC upholds the Nasdaq officer's decision. Firms would not be charged for successful appeals. Nasdaq believes that this fee will encourage members to consider whether the facts and economic value at stake merit appellate consideration. Nasdaq notes that NYSE Arca Equities, Inc. ("NYSE Arca") recently adopted a similar \$500.00 appellate fee in order to reduce apparent abuses of the appeals process on that exchange.⁵

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁶ in general, and with Section 6(b)(4) of the Act,⁷ in particular, in that the proposed rule change provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which Nasdaq operates or controls. Nasdaq believes that the modest fee of \$500 for an unsuccessful appeal under Rule 11890 will be equitably assessed against members that impose burdens on the time of Nasdaq staff and MORC

members by filing appeals that lack merit.

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

Nasdaq 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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act⁸ and paragraph (f)(2) of Rule 19b-4⁹ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.¹⁰

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-NASDAQ-2007-013 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-NASDAQ-2007-013. 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 Nasdaq. 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-NASDAQ-2007-013 and should be submitted on or before April 3, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55412; File No. SR-NASD-2007-015]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend NASD Rules 1012 (General Provisions) and 1013 (New Member Application and Interview) To Require an Applicant for Membership To Submit an Application in the Manner Prescribed by NASD

March 7, 2007.

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 February 20, 2007, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange

⁵ Securities Exchange Act Release No. 54655 (October 26, 2006), 71 FR 64596 (November 2, 2006) (SR-NYSEArca-2006-48).

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(4).

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

⁹ 17 CFR 240.19b-4(f)(2).

¹⁰ For the purposes of calculating the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on March 1, 2007, when Amendment No. 1 was filed.

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by NASD. NASD has designated the proposed rule change as constituting a "non-controversial" proposed rule change under paragraph (f)(6) of Rule 19b-4 under the Act,³ which renders the proposed rule change effective upon filing with the Commission. 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 proposes to amend NASD Rules 1012 (General Provisions) and 1013 (New Member Application and Interview) to require an applicant for membership to submit an application in the manner prescribed by NASD. The text of the proposed rule change is available at NASD, www.nasd.com, and 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 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

Applying for NASD membership is a comprehensive process requiring the submission of extensive information, considerable attention to detail, and a substantial time commitment. To streamline the application process and outline clearly the information that must be submitted with the application, NASD recently amended Rule 1013 (New Member Application and Interview) to require applicants to use a standardized form, Form NMA, to submit their membership applications.⁴ Form NMA is organized according to

the 14 individual standards for membership enumerated in Rule 1014 (Department Decision) and assists applicants in compiling a complete application package by listing the forms and supporting documentation required by Rule 1013. Applicants currently submit Form NMA in hard copy to NASD, along with the required forms and supporting documentation, via hand delivery, courier, or first-class mail.⁵

NASD, however, previously indicated in the rule filing requiring applicants to use Form NMA that it intended to develop systems to enable applicants to submit Form NMA electronically. NASD has now completed those systems and converted Form NMA to an electronic document. The electronic Form NMA and the new electronic application submission process changes only the manner in which NASD receives the information that a membership application is required to include under Rule 1013. They do not change the information applicants must submit pursuant to Rule 1013 or the standards set forth in Rule 1014 for granting an applicant's membership application.

The proposed rule change amends Rule 1012 to require applicants to file an application in the manner prescribed in Rule 1013. The proposed rule change also amends Rule 1012(a) to reflect that the electronic filing of a new member application will be deemed complete on the date specified on the confirmation page generated by the electronic filing system. In addition, the proposed rule change amends Rule 1013(a) to require new member applicants to file an application in the manner prescribed by NASD and to include the completed Form NMA as part of the contents of a membership application.

Finally, the proposed rule change deletes outdated references in Rules 1011, 1012 and 1013 to "the Association" and replaces them with "NASD."⁶

Prior to the proposed rule change being operative and implemented, NASD will make the Form NMA available to applicants via Web CRD and will outline details in a Notice to Members regarding how to complete the online form and submit it using the new electronic filing system.⁷

⁵ See Rule 1012(a)(1) and Rule 1013(a)(1).

⁶ NASD no longer refers to itself using its full corporate name or "the Association." Instead, NASD uses the name "NASD" unless otherwise appropriate for corporate or regulatory reasons.

⁷ NASD will also provide notice through the NASD Notice to Members process (or similar guidance) of any systems changes to the electronic application process that would alter the manner in which applicants interact with the electronic filing system.

This move away from a paper new member application to an electronic application will further streamline and make more efficient the new member application process.⁸ An electronic application process is also consistent with NASD's By-Laws, which state that new member applications "shall be made to the NASD via electronic process or such other process as the NASD may prescribe, on the form to be prescribed by the NASD."⁹

As noted in Item 2 above, NASD has filed the proposed rule change for immediate effectiveness. NASD will announce the implementation date of the proposed rule change in a *Notice to Members* to be published no later than 60 days following Commission notice of the filing of the proposed rule change for immediate effectiveness. The implementation date will be 30 days from the publication of the *Notice to Members*.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹⁰ which requires, among other things, that NASD rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed rule change amends Rules 1012 and 1013 to require new member applications to be submitted in the manner prescribed by NASD, which will be electronically. The proposed rule change does not propose any new or additional content requirements for member applications. NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) as the requirement to file electronic applications using Form NMS will ensure a more streamlined and efficient membership application process.

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.

⁸ Cf. Securities Exchange Act Release No. 54654 (October 26, 2006), 71 FR 64326 (November 1, 2006) (SR-NASD-2006-60) (order approving new NASD Rule 3170 (Mandatory Electronic Filing Requirements) giving NASD the authority to require members to file or submit electronically any regulatory notice or other document that a member is required to file with (or otherwise submit to) NASD).

⁹ NASD By-Laws, Art. IV, Sec. 1(a).

¹⁰ 15 U.S.C. 78o-3(b)(6).

³ *Id.*

⁴ See Securities Exchange Act Release No. 53564 (March 29, 2006), 71 FR 16847 (April 4, 2006) (SR-NASD-2006-038).

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

Because the foregoing proposed rule change does not:

- (i) Significantly affect the protection of investors or the public interest;
- (ii) impose any significant burden on competition; and
- (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹¹ and Rule 19b-4(f)(6) thereunder.¹²

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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-2007-015 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-2007-015. 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](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 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-2007-015 and should be submitted on or before April 3, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55409; File No. SR-NASD-2007-004]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change as Modified by Amendment No. 1 To Amend NASD Rule 7010(k) Relating to Transaction Reporting and Compliance Engine Transaction Data

March 6, 2007.

On January 16, 2007, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to offer subscribers to its Transaction Reporting and Compliance Engine system ("TRACE") the ability to receive, for a reduced fee, a "snapshot" of real-time TRACE transaction data once each day rather than continuously throughout the

day. The proposed rule change was published for comment in the **Federal Register** on February 2, 2007.³ The Commission received no comments regarding the proposal. On March 2, 2007, the Exchange submitted Amendment No. 1 to the proposed rule change.⁴

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.⁵ The proposal would offer a new TRACE subscription option whereby subscribers could pay \$250/month to receive TRACE transaction data daily, once a day ("Snapshot TRACE data") rather than paying \$1,500/month for continuous access to TRACE transaction data. NASD has identified certain market participants, namely institutional investors, who only need a single price, daily, for each security for purposes of position valuation. NASD believes that, given the limited need for TRACE transaction data for these market participants, the \$1,500/month charge for continuous access to TRACE transaction data may be unnecessarily expensive for them. NASD further believes that the proposed charge of \$250/month for Snapshot TRACE data is reasonable and more appropriate for the tailored transaction informational needs of certain institutional market participants, who are currently foregoing TRACE transaction data at the higher monthly charge for continuous data.

The Commission finds that the proposed rule change is consistent with the Act, and particularly with Section 15A(b)(5) thereof,⁶ which requires that NASD's rules provide for the equitable allocation of dues, fees, and other charges among members and issuers and other persons using any facility or system which NASD operates or controls. The Commission believes that the proposed rule change, by offering the option of tailored access to TRACE transaction data at a reduced cost, is reasonable.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁷ that the proposed rule change (SR-NASD-2007-

³ See Securities Exchange Act Release No. 55180 (January 26, 2007), 72 FR 5095.

⁴ Amendment No. 1 made technical changes to the proposal and is not subject to notice and comment.

⁵ In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78o-3(b)(5).

⁷ 15 U.S.C. 78s(b)(2).

¹¹ 15 U.S.C. 78s(b)(3)(A).

¹² 17 CFR 240.19b-4(f)(6).

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.