

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

Nancy M. Morris,  
Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54479; File No. SR-NASD-2006-108]

### Self-Regulatory Organizations: National Association of Securities Dealers, Inc.; Notice of Filing of a Proposed Rule Change Relating to a New NASD Trade Reporting Facility Established in Conjunction With the National Stock Exchange

September 21, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 14, 2006, the National Association of Securities Dealers, Inc. (“NASD”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by NASD. 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 is proposing to adopt rules relating to a new Trade Reporting Facility (the “NASD/NSX TRF”) to be established by NASD, in conjunction with the National Stock Exchange (“NSX”), that would provide members another mechanism for reporting trades in Nasdaq-listed equity securities effected otherwise than on an exchange. The proposed NASD/NSX TRF structure and rules are substantially similar to the Trade Reporting Facility (“TRF”) established by NASD and Nasdaq Stock Market, Inc. (the “NASD/Nasdaq TRF”) and rules relating thereto, which were approved by the Commission pursuant to proposed rule change SR-NASD-2005-087.<sup>3</sup> Pursuant to the proposed

rule change, NASD is also proposing: (1) Amendments to certain NASD rules to reflect the operation of more than one Trade Reporting Facility established by NASD; and (2) new NASD Rule 5140 relating to the use of multiple Market Participant Symbols by members reporting trades to a Trade Reporting Facility established by NASD.

The text of the proposed rule change is available on NASD’s Web site at (<http://www.nasd.com>), at the principal office of the NASD, at the Commission’s Public Reference Room, and the Commission’s Web site at (<http://www.sec.gov>).

#### 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

On June 30, 2006, the Commission approved SR-NASD-2005-087.<sup>4</sup> Among other things, the Approval Order proposed: (1) Amendments to the NASD Delegation Plan, NASD By-Laws and NASD rules to reflect a proposed phased implementation strategy for the operation of the Nasdaq Exchange as a national securities exchange with respect to Nasdaq-listed securities during a transitional period; and (2) rules for reporting trades effected otherwise than on an exchange to the NASD/Nasdaq TRF. Pursuant to SR-NASD-2005-087, NASD proposed the NASD Rule 4000 Series (The Trade Reporting Facility) and the NASD Rule 6100 Series (Clearing and Comparison Rules), which generally apply to trade reporting and clearing and comparison services via the NASD/Nasdaq TRF.

##### NASD/NSX Trade Reporting Facility

The NASD proposes to establish a new NASD/NSX TRF on substantially the same terms as the NASD/Nasdaq TRF.<sup>5</sup> The NASD/NSX TRF will provide

members another mechanism, which has been developed by NSX, for reporting transactions in Nasdaq-listed equity securities executed otherwise than on an exchange.<sup>6</sup> Members will match and/or execute orders internally or through proprietary systems and submit these trades to the NASD/NSX TRF with the appropriate information and modifiers. The NASD/NSX TRF will report the trades to the appropriate exclusive securities information processor (“SIP”).<sup>7</sup> As with trades reported to the NASD/Nasdaq TRF, NASD/NSX TRF transactions disseminated to the media will include a modifier indicating the source of such transactions that would distinguish them from transactions executed on or through the NSX. In addition, the NASD/NSX TRF will provide NASD with a real-time copy of each trade report for regulatory review purposes. At the option of the participant, the NASD/NSX TRF may also provide the necessary clearing information regarding transactions to the National Securities Clearing Corporation (“NSCC”).

Like the NASD/Nasdaq TRF, the NASD/NSX TRF will be a facility of NASD, subject to regulation by NASD and NASD’s registration as a national securities association. It will not be a service “for the purpose of effecting or reporting a transaction” on the NSX; rather, it will be a service for the purpose of reporting over-the-counter transactions in Nasdaq-listed equity securities to NASD.<sup>8</sup> Thus, members that meet all applicable requirements will now have the option of reporting transactions in Nasdaq-listed equity securities executed otherwise than on an exchange to the NASD/NSX TRF,

Order, NASD indicated that it was prepared to implement a TRF with any exchange based on whatever technology the exchange has available to it. See Letter to Honorable Christopher Cox, Chairman, Commission, dated May 2, 2006 from Robert Glauber, Chairman and Chief Executive Officer, NASD.

As the Commission noted in its Approval Order, the Act does not prohibit NASD from establishing different facilities for purposes of fulfilling its regulatory obligations. See Approval Order.

<sup>6</sup> NASD will submit a second proposed rule change relating to reporting to the NASD/NSX TRF of transactions in all exchange-listed securities executed otherwise than on an exchange.

<sup>7</sup> The NASD/NSX TRF will have controls in place to ensure that transactions that are reported to the NASD/NSX TRF, but are priced significantly away from the current market, will not be submitted to the SIP. This is consistent with current practice, which is designed to preserve the integrity of the tape; today, such trades are not submitted to the SIP by the ADF or the NASD/Nasdaq TRF.

<sup>8</sup> See Approval Order.

<sup>11</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006) (SR-NASD-2005-087) (“Approval Order”). SR-NASD-2005-087 became effective upon the date on which The NASDAQ Stock Market LLC (the “Nasdaq Exchange”) commenced operation as a national securities exchange for Nasdaq-listed securities, which was August 1, 2006.

<sup>4</sup> *Id.*

<sup>5</sup> In response to comments submitted to the Commission in connection with the Approval

NASD's Alternative Display Facility ("ADF") or the NASD/Nasdaq TRF.<sup>9</sup>

NSX has developed the system that participants will use to access the NASD/NSX TRF. Technical Specifications to connect to the NASD/NSX TRF system are available upon request to NASD and will be accessible through the NASD's Web site at a later date.

#### *NASD/NSX TRF Limited Liability Company Agreement*

NASD and NSX propose to enter into a Limited Liability Company Agreement of NASD/NSX Trade Reporting Facility LLC ("the NASD/NSX LLC Agreement"). The terms of the NASD/NSX LLC Agreement are substantially similar to the terms of the LLC agreement that NASD entered with Nasdaq Stock Market Inc. ("Nasdaq").

NASD will have sole regulatory responsibility for the NASD/NSX TRF, while NSX agrees to pay the cost of regulation and will provide systems to enable members to report trades to the NASD/NSX TRF. NSX will be entitled to the profits and losses, if any, derived from the operation of the NASD/NSX TRF.

NASD, the SRO Member under the NASD/NSX LLC Agreement, will perform SRO Responsibilities including, but not limited to:

(1) Adoption, amendment and interpretation of policies arising out of and regarding any aspect of the operation of the facility considered material by the SRO Member, or regarding the meaning, administration, or enforcement of an existing rule of the SRO Member, including any generally applicable exemption from such a rule;

(2) Approval of rule filings of the SRO Member prior to filing with the Commission;

(3) Regulation of the NASD/NSX TRF's activities of or relating to SRO Responsibilities, including the right to review and approve, in the SRO Member's sole reasonable discretion, the regulatory budget for the NASD/NSX TRF;

(4) Securities regulation and any other matter implicating SRO Responsibilities; and

(5) Real-time market surveillance.<sup>10</sup>

<sup>9</sup>NASD will have an integrated audit trail of NASD/Nasdaq TRF, NASD/NSX TRF and ADF transactions and will have integrated surveillance capabilities. NASD expects that comprehensive audit trail and surveillance integration on an automated basis will be completed by the end of the fourth quarter of 2006. Prior to that time, NASD staff will be able to create an integrated audit trail on a manual basis as needed for regulatory purposes.

<sup>10</sup>The SRO Member will perform real-time market surveillance related to trades reported to the

NSX, the "Business Member" under the NASD/NSX LLC Agreement, will be primarily responsible for the management of the facility's business affairs to the extent those activities are not inconsistent with the regulatory and oversight functions of NASD. Under Section 9(d) of the NASD/NSX LLC Agreement, each Member agrees to comply with the Federal securities laws and the rules and regulations thereunder and to cooperate with the Commission pursuant to its regulatory authority and the provisions of the NASD/NSX LLC Agreement.

The NASD/NSX TRF will be managed by or under the direction of a Board of Directors to be established by the parties. NASD will have the right to designate at least one Director, the SRO Member Director, who may be a member of NASD's Board of Governors or an officer or employee of NASD designated by the NASD Board of Governors. The SRO Member Director will have veto power over all major actions of the NASD/NSX LLC Board. Major Actions are defined in Section 10(e) of the NASD/NSX LLC Agreement to include:

(1) Approving pricing decisions that are subject to the SEC filing process;

(2) Approving contracts between the NASD/NSX TRF and the Business Member, any of its affiliates, directors, officers or employees;

(3) Approving Director compensation;

(4) Selling, licensing, leasing or otherwise transferring material assets used in the operation of the NASD/NSX TRF's business outside of the ordinary course of business with an aggregate value in excess of \$3 million;

(5) Approving or undertaking a merger, consolidation or reorganization of the NASD/NSX TRF with any other entity;

(6) Entering into any partnership, joint venture or other similar joint business undertaking;

(7) Making any fundamental change in the market structure of the NASD/NSX TRF from that contemplated by the Members as of the date of the NASD/NSX LLC Agreement;

(8) To the fullest extent permitted by law, taking any action to effect the voluntary, or which would precipitate an involuntary, dissolution or winding up of the Company, other than as contemplated by Section 21 of the NASD/NSX LLC Agreement;

NASD/NSX TRF. However, because the NASD/NSX TRF via the Business Member will submit transaction information directly to the SIP, the NASD/NSX TRF via the Business Member also will establish and implement controls to ensure that transactions that are reported to the NASD/NSX TRF, but are priced significantly away from the current market, will not be submitted to the SIP. See *supra* note 7.

(9) Conversion of the NASD/NSX TRF from a Delaware limited liability company into any other type of entity;

(10) Expansion of or modification to the business which results in the NASD/NSX TRF engaging in material business unrelated to the business of Non-System Trading;<sup>11</sup>

(11) Changing the number of Directors on or composition of the Board; and

(12) Adopting or amending policies regarding access and credit matters affecting the NASD/NSX TRF.

In addition, each Director agrees to comply with the Federal securities laws and the rules and regulations thereunder and to cooperate with the Commission and the SRO Member pursuant to their regulatory authority.

The principal difference between the NASD/NSX LLC Agreement and the LLC Agreement NASD entered with Nasdaq relates to termination. The initial term of the agreement is three years. During that time, until the NASD/NSX TRF reaches "Substantial Trade Volume" (defined as 250,000 trades or more per day for three consecutive months), NSX may terminate the arrangement for convenience. After the NASD/NSX TRF reaches Substantial Trade Volume, either Member may terminate NASD/NSX Trade Reporting Facility LLC by providing to the other Member prior written notice of at least one year (as in the case with Nasdaq). Neither Member may deliver such notice before the second anniversary of the effective date of the NASD/NSX LLC Agreement. In addition, at any time, NASD may terminate in the event its status or reputation as a preeminent SRO is called into jeopardy by the actions of NSX or the NASD/NSX TRF. In the event of termination of the NASD/NSX TRF arrangement, NASD will be able to fulfill all of its regulatory obligations with respect to over-the-counter trade reporting through its other facilities, including the NASD/Nasdaq TRF and ADF.

#### *NASD/NSX Trade Reporting Facility Rules*

Members will report trades in Nasdaq-listed equity securities effected otherwise than on an exchange to the NASD/NSX TRF pursuant to NASD rules. As such, NASD is proposing rules relating to the use and operation of the NASD/NSX TRF that are substantially similar to the rules approved by the Commission relating to the NASD/

<sup>11</sup>Pursuant to the NASD/NSX LLC Agreement, "Non-System Trading" means trading otherwise than on an exchange of securities for which the SEC has approved a transaction reporting plan pursuant to Rule 601 of Regulation NMS under the Act.

Nasdaq TRF.<sup>12</sup> Specifically, NASD is proposing the new NASD Rule 4000C and NASD Rule 6100C Series, which track the NASD Rule 4000 and NASD Rule 6100 Series adopted pursuant to the Approval Order.

Similar to the NASD/Nasdaq TRF rules, to become a participant in the NASD/NSX TRF, an NASD member must meet minimum requirements as outlined in NASD Rule 6120C. These include execution of, and continuing compliance with, a Participant Application Agreement; membership in, or maintenance of an effective clearing arrangement with a participant of a clearing agency registered pursuant to the Act; and the acceptance and settlement of each trade that the NASD/NSX TRF identifies as having been effected by the participant.

Members that report trades to the NASD/NSX TRF must include the details of the trade, as required by the proposed rules. Participants must also include the unique order identifier assigned for purposes of reporting to the Order Audit Trail System, thus enabling NASD to match the order against the trade that was reported to the tape by the NASD/NSX TRF.

As with the NASD/Nasdaq TRF, participants may enter into "give-up" arrangements whereby one member reports to the NASD/NSX TRF on behalf of another member. Participants must complete and submit to the NASD/NSX TRF the appropriate documentation reflecting the arrangement. Proposed NASD Rule 4632C(g) provides that the member with the reporting obligation remains responsible for the transaction submitted on its behalf. Further, both the member with the reporting obligation and the member submitting the trade to the NASD/NSX TRF are responsible for ensuring that the information submitted is in compliance with all applicable rules and regulations.<sup>13</sup>

In addition, participants will be able to submit "riskless principal" transactions<sup>14</sup> to the NASD/NSX TRF. Similar to the NASD/Nasdaq TRF, the

non-media portion of a riskless principal transaction will not be reported to the tape, but will be submitted real-time to NASD for regulatory purposes and, at the option of the user, to NSCC. Proposed NASD Rule 4632C(d)(3)(B)<sup>15</sup> would clarify that where the media leg of the riskless principal transaction is reported to the NASD/NSX TRF, the second, non-media leg must also be reported to the NASD/NSX TRF. However, where the media leg of the riskless principal transaction was previously reported by an exchange, the member would be permitted, but not required, to report the second, non-media leg to the NASD/NSX TRF. Members that choose to report such transactions to the NASD/NSX TRF must include all data elements required under the rules. Members should note, however, that transactions reported by an exchange should not be reported to NASD/NSX TRF for media purposes, as that would result in double reporting of the same transaction.<sup>16</sup>

Finally, NASD will have the authority to halt trading otherwise than on an exchange reported to the NASD/NSX TRF. The scope of NASD's authority under proposed NASD Rule 4633C is identical to its authority to halt trading reported to the NASD/Nasdaq TRF and the ADF.

As described below, the proposed rules differ from the NASD/Nasdaq TRF rules in certain respects. Currently, NASD Rules 4100 and 4200(a)(2) of the NASD/Nasdaq TRF rules define "designated securities" as all Nasdaq National Market (now Nasdaq Global Market) and Nasdaq Capital Market securities and convertible bonds listed on Nasdaq.<sup>17</sup> As defined in proposed

<sup>12</sup> Proposed NASD Rule 4632C(d)(3)(B) mirrors recently proposed amendments to NASD Rule 4632(d)(3)(B) of the NASD/Nasdaq TRF rules. See Securities Exchange Act Release No. 54451 (September 15, 2006) (SR-NASD-2006-104) (Notice).

<sup>13</sup> Proposed NASD Rule 4632C(e)(6) provides that transactions reported on or through an exchange shall not be reported to the NASD/NSX TRF for purposes of publication. This proposed rule mirrors NASD Rule 4632(e)(6) of the NASD/Nasdaq TRF rules. See Securities Exchange Act Release Nos. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006) (File No. SR-NASD-2005-087); 53977 (June 12, 2006), 71 FR 34976 (June 16, 2006) (File No. SR-NASD-2006-055); and 54318 (August 15, 2006), 71 FR 48959 (August 22, 2006) (File No. SR-NASD-2006-098).

<sup>14</sup> On September 5, 2006, NASD filed a proposed rule change that proposes, among other things, to amend the definition of "designated securities" in NASD Rules 4100 and 4200(a)(2) to apply to all NMS stocks as defined in NASD Rule 600(b)(47) of Regulation NMS under the Act. See Securities Exchange Act Release No. 54451 (September 15, 2006) (SR-NASD-2006-104) (Notice). NASD intends to propose a similar amendment to the definition of "designated securities" in proposed

NASD Rules 4100C and 4200C(a)(2), "designated securities" for purposes of reporting trades to the NASD/NSX TRF means "all equity securities listed on the Nasdaq Stock Market LLC." The proposed definition is intended to capture the same universe of Nasdaq-listed securities (except for convertible bonds) in current NASD Rules 4100 and 4200(a)(2), without specifying the various Nasdaq tiers.

Second, pursuant to proposed NASD Rule 6120C, only members of NASD may use the NASD/NSX TRF. Non-members will not be permitted to submit trade reports to the NASD/NSX TRF. Under very limited circumstances, certain Non-Member Clearing Organizations are granted access to and participation in the NASD/Nasdaq TRF.

Third, pursuant to proposed NASD Rule 6140C, all trades submitted to the NASD/NSX TRF must be locked-in prior to entry into the System. The NASD/NSX TRF will have no trade comparison functionality. Thus, there are no proposed rules relating to trade matching, trade acceptance or aggregate volume matching. Similarly, there will be no "Browse" function, meaning that participants will not be able to review or query for trades in the NASD/NSX TRF identifying the participant as a party to the transaction.

Fourth, on the first day of operation, the NASD/NSX TRF will not be able to support trade reporting for certain transactions. Specifically, transactions executed outside of normal market hours cannot be reported to the NASD/NSX TRF on an "as/of" or next day (T+1) basis, pursuant to NASD Rule 4632C(a)(2). In addition, the NASD/NSX TRF will not support the .W or .PRP modifiers and therefore proposed NASD Rule 4632C(a)(7) provides that Stop Stock Transactions (as such term is defined in NASD Rule 4200C), transactions at prices based on average-weighting or other special pricing formulae, and transactions that reflect a price different from the current market when the execution price is based on a prior reference point in time cannot be reported to the NASD/NSX TRF. Thus, proposed NASD Rules 4632C(a)(2) and (7) expressly require members to report such trades to NASD via an alternative electronic mechanism.<sup>18</sup>

Similarly, proposed NASD Rule 4632C(a)(3) provides that participants

NASD Rules 4100C and 4200C(a)(2) in a separate rule filing.

<sup>18</sup> The NASD/NSX TRF is intended to ultimately have much of the same functionality that will be provided by the NASD/Nasdaq TRF. When and if such functionality is developed, NASD will file a proposed rule change to amend the NASD/NSX TRF trade reporting rules accordingly.

<sup>12</sup> See Approval Order.

<sup>13</sup> As noted above, NASD/Nasdaq TRF participants may enter into "give-up" arrangements; however, the NASD/Nasdaq TRF rules currently do not contain a provision similar to proposed NASD Rule 4632C(g). NASD has submitted a proposed rule change to amend the NASD/Nasdaq TRF rules to include a provision that is identical to proposed NASD Rule 4632C(g). See Securities Exchange Act Release No. 54451 (September 15, 2006) (SR-NASD-2006-104) (Notice).

<sup>14</sup> A riskless principal transaction is a transaction in which a member, after having received a customer order, executes an offsetting transaction, as principal, with another customer or broker-dealer to fill that customer order and both transactions are executed at the same price.

must use an alternative electronic mechanism, and comply with all rules applicable to such alternative mechanism, to report transactions to NASD for which electronic submission to the NASD/NX TRF is not possible. Where last sale reports of transactions in designated securities cannot be submitted to NASD via an alternative electronic mechanism such as the ADF or another Trade Reporting Facility (for example, where the ticker symbol for the security is no longer available or a market participant identifier is no longer active), members shall report such transactions as soon as practicable to the NASD Market Regulation Department on Form T. Transactions that can be reported to NASD electronically, whether on trade date or on a subsequent date on an "as of" basis (T+N), shall not be reported on Form T.

Fifth, members will not be permitted to aggregate individual executions of orders in a security at the same price into a single transaction report submitted to the NASD/NX TRF. Thus, the proposed rule change does not contain a counterpart to NASD Rule 4632(f) or NASD Rule 6100(e) permitting "bunched" trades to be reported to the NASD/Nasdaq TRF.

Finally, cancellation of any trade that has been submitted to the NASD/NX TRF must be reported in accordance with proposed NASD Rule 4632C(f). For trades that are cancelled after the day of execution of the trade or trade cancellations that are not reported on the day of execution of the trade, members must contact Trade Reporting Facility Operations to report the trade cancellation.

NASD notes that the proposed rule change does not include any proposed rules relating to fees, assessments and credits specifically related to the NASD/NX TRF. Fees, assessments and credits, if any, with respect to the NASD/NX TRF will be the subject of a future rule filing with the SEC.

#### *Proposed Amendments to Certain Existing NASD Rules*

Although not explicitly detailed herein, it is important to note that all other NASD rules that apply to over-the-counter trading generally will apply to trades reported to the NASD/NX TRF. However, certain NASD rules must be amended in order to reflect the operation of more than one Trade Reporting Facility.

NASD Rule 5100 (Short Sale Rule), which restricts short selling on a "downbid," will apply to transactions reported to the NASD/NX TRF. The text of that rule currently provides that, with respect to trades reported to

NASD's Alternative Display Facility or the Trade Reporting Facility, no member shall effect a short sale in a Nasdaq Global Market Security otherwise than on an exchange at or below the current national best (inside) bid when the current national best (inside) bid is below the preceding national best (inside) bid. NASD is proposing a technical amendment to NASD Rule 5100 to change the reference to "the Trade Reporting Facility" to "a Trade Reporting Facility" to clarify that the rule applies to trades reported to any Trade Reporting Facility established by NASD. NASD is proposing an identical technical amendment to NASD Interpretive Material (IM)-5100(b) to change the reference to "the Trade Reporting Facility" to "a Trade Reporting Facility." NASD believes that the current language is too narrow and may suggest that the rule applies only to trades reported to the NASD/Nasdaq TRF.

In addition, NASD Rule 6120 currently provides that participation in the System<sup>19</sup> is mandatory for members that are participants of a clearing agency registered with the Commission pursuant to Section 17A of the Act, and for members that have a clearing arrangement with such a participant, unless a member subscribes to TRACS. NASD is proposing to amend this rule to provide that participation in the System is mandatory for any member that has an obligation to report an over-the-counter transaction to NASD, unless the member has an alternative mechanism pursuant to NASD rules for reporting and clearing such transaction. Thus, for example, participation in the System under NASD Rule 6120 for purposes of reporting trades in Nasdaq-listed equity securities would not be mandatory for a member that is a Participant in the NASD/NX TRF.

#### *Proposed New Rule Relating to Multiple Market Participant Symbols*

NASD is proposing a new rule in the NASD Rule 5000 Series (Trading Otherwise Than On An Exchange) relating to the use of multiple Market Participant Symbols ("MPIDs") by members using a Trade Reporting Facility established by NASD. Proposed NASD Rule 5140 (Multiple MPIDs for Trade Reporting Facility Participants) would provide that any Trade Reporting Facility Participant that wishes to use more than one MPID for purposes of reporting trades to a Trade Reporting

Facility must submit a written request to, and obtain approval from, NASD Operations for such additional MPID(s).

In addition, NASD is proposing new NASD Interpretive Material (IM)-5140 stating that NASD considers the issuance of, and trade reporting with, multiple MPIDs to be a privilege and not a right. A Trade Reporting Facility Participant must identify the purpose(s) for which the multiple MPIDs will be used. If NASD determines that the use of multiple MPIDs is detrimental to the marketplace, or that a Trade Reporting Facility Participant is using one or more additional MPIDs improperly or for other than the purpose(s) identified by the Participant, NASD staff retains full discretion to limit or withdraw its grant of the additional MPID(s) to such Trade Reporting Facility Participant for purposes of reporting trades to a Trade Reporting Facility. NASD believes that the proposed new rule and interpretive material are necessary in order to consolidate the process of issuing multiple MPIDs with NASD.<sup>20</sup>

NASD will announce the effective date of the proposed rule change no later than 30 days following Commission approval.

## 2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>21</sup> which requires, among other things, that NASD rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities, to remove impediments to and protect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. NASD believes that establishment of the NASD/NX TRF is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets because it will provide members another mechanism to report

<sup>20</sup> Currently, members that use the NASD/Nasdaq TRF are able to obtain and use multiple MPIDs upon request. NASD notes that NASD/Nasdaq TRF Participants using existing multiple MPIDs will be grandfathered and will not be required to submit a new form to NASD Operations in order to continue using their MPIDs. However, any such Participant wishing to obtain additional MPIDs after implementation of proposed NASD Rule 5140 would need the approval of NASD Operations. To the extent that a Participant is a member of multiple SROs and intends to use the MPID(s) on multiple SRO systems, NASD will work with the other SRO(s) to coordinate the MPID approval process.

<sup>21</sup> 15 U.S.C. 78o-3(b)(6).

<sup>19</sup> "System" is defined in NASD Rule 6110(m) to mean the NASD/Nasdaq Trade Reporting Facility, the trade reporting service of the ITS/CAES System, and the OTC Reporting Facility.

transactions in Nasdaq-listed equity securities effected otherwise than on an exchange.

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

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Written comments were neither solicited nor received.

### III. Date of Effectiveness of the Proposed Rule Change and Timing For Commission Action

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

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2006-108 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-2006-108. 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 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-2006-108 and should be submitted on or before October 18, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>22</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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## UNITED STATES SENTENCING COMMISSION

### Sentencing Guidelines for United States Courts

**AGENCY:** United States Sentencing Commission.

**ACTION:** Notice of final action regarding amendments to Federal sentencing guidelines effective November 1, 2006; correction.

**SUMMARY:** On May 1, 2006, the Commission submitted to Congress amendments to the federal sentencing guidelines and published these amendments in the **Federal Register** on May 15, 2006. See 71 FR 28063. The Commission has made technical and conforming amendments to commentary provisions related to those amendments and has made a correction to the amendatory language of one amendment.

**DATES:** The Commission has specified an effective date of November 1, 2006, for the amendments set forth in this notice.

**FOR FURTHER INFORMATION CONTACT:** Michael Courlander, Public Affairs Officer, telephone: (202) 502-4590.

**SUPPLEMENTARY INFORMATION:** The United States Sentencing Commission, an independent commission in the judicial branch of the United States government, is authorized by 28 U.S.C. 994(a) to promulgate sentencing guidelines and policy statements for federal courts. Section 994 also directs the Commission to review and revise periodically promulgated guidelines and authorizes it to submit guideline amendments to Congress not later than the first day of May each year. See 28 U.S.C. 994(o), (p). Absent an affirmative disapproval by the Congress within 180 days after the Commission submits its amendments, the amendments become effective on the date specified by the Commission (typically November 1 of the same calendar year). 28 U.S.C. 994(p).

Unlike amendments made to sentencing guidelines, amendments to commentary may be made at any time and are not subject to congressional review. To the extent practicable, the Commission endeavors to include amendments to commentary in any submission of guideline amendments to Congress. Occasionally, however, the Commission determines that technical and conforming changes to commentary are necessary in order to execute correctly the amendments submitted to Congress. This notice sets forth technical and conforming amendments to commentary related to the amendments submitted to Congress on May 1, 2006, that will become effective date on November 1, 2006. This notice also sets forth a correction to amendatory language.

**Authority:** USSC Rules of Practice and Procedure 4.1.

**Ricardo H. Hinojosa,**  
*Chair.*

#### 1. Amendment

The Commentary to § 2B1.1 captioned "Application Notes" is amended in Note 7(C) by striking "§ 2J1.7" and inserting "§ 3C1.3".

The Commentary to § 2K2.1 captioned "Application Notes", as amended by Amendment 9 submitted to Congress on May 1, 2006 (71 FR 28069; USSG App. C (amendment 691)), is further amended in Note 3 by inserting "*Definition of 'Prohibited Person'.*—" before "For purposes"; and in Note 11, as redesignated by Amendment 9 (USSG App. C (amendment 691)), by striking "Note 8" and inserting "Note 7".

The Commentary to § 2K2.4 captioned "Application Notes" is amended in

<sup>22</sup> 17 CFR 200.30-3(a)(12).