

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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. 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-2004-130 and should be submitted on or before July 30, 2007.

VII. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,²⁷ that the proposed rule change (SR-NASD-2004-130), as modified by Amendment Nos. 2 and 3, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁸

Florence E. Harmon,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56003; File No. SR-NASD-2007-028]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to the Order Audit Trail System

July 2, 2007.

On April 17, 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 amend Rules 6951 and 6954 to require members that transmit an intermarket sweep order ("ISO") to another member, electronic communications network, nonmember, or exchange to record and report the fact that the order was an ISO. On May 18, 2007, NASD filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on May 31, 2007.³ The Commission received no comment letters on the proposal. This order approves the proposed rule change, as modified by Amendment No. 1.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to NASD,⁴ and, in particular, section 15A(b)(6) of the Act⁵ 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 transactions in securities, 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.

On June 9, 2005, the Commission adopted Regulation NMS,⁶ which among other things, adopted an Order Protection Rule⁷ that requires trading centers to establish, maintain, and enforce policies and procedures designed to prevent the execution of trades at prices inferior to protected quotations displayed by automated trading centers, subject to applicable exceptions. One of the exceptions from the Order Protection Rule is when the transaction that constitutes a trade-through⁸ is "effected by a trading center that simultaneously routed an intermarket sweep order to execute against the full displayed size of any

protected quotation in the NMS stock that was traded through."⁹

The purpose of the proposed rule change is to require member firms to record the fact that an order in an OATS-eligible security is an ISO when the member routes an ISO to another member or non-member. The member would be required to include this information in the Route Report it submits to NASD pursuant to the OATS Rules.¹⁰ This requirement should ensure that NASD knows that the order was an ISO and can utilize that information when reviewing audit trails.¹¹

The Commission believes that the proposed rule change is consistent with the Act and should enhance OATS data and help ensure that the NASD is able to more effectively monitor compliance with Regulation NMS.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹² that the proposed rule change (File No. SR-NASD-2007-028), as amended, be, and hereby is, approved.

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

Florence E. Harmon,
Deputy Secretary.

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⁹ See 17 CFR 242.611(b)(6). The phrase "intermarket sweep order" is defined as "a limit order for an NMS stock that meets the following requirements: (i) When routed to a trading center, the limit order is identified as an intermarket sweep order; and (ii) Simultaneously with the routing of the limit order identified as an intermarket sweep order, one or more additional limit orders, as necessary, are routed to execute against the full displayed size of any protected bid, in the case of a limit order to sell, or the full displayed size of any protected offer, in the case of a limit order to buy, for the NMS stock with a price that is superior to the limit price of the limit order identified as an intermarket sweep order. These additional routed orders must also be marked as intermarket sweep orders." The proposed rule change adopts this same definition of intermarket sweep order for purposes of the OATS Rules. See 17 CFR 242.600(b)(30).

¹⁰ When a member transmits an order in an OATS-eligible security to another member, electronic communications network, non-member, or exchange for handling or execution, the routing member is required to submit a Route Report to NASD. The categories of information that a member must include in a Route Report are set forth in NASD Rule 6954(c) and in the *OATS Reporting Technical Specifications* published by NASD.

¹¹ As discussed in the Notice, firms will not be required to begin using the ISO routing method code on Route Reports until February 4, 2008, but the code will be available for use by firms immediately on approval. Firms are encouraged to use the ISO code as soon as possible to facilitate NASD's ability to determine whether the trade was made in reliance on an ISO exception from the Order Protection Rule.

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 200.30-3(a)(12).

²⁷ 15 U.S.C. 78s(b)(2).

²⁸ 17 CFR 200.30(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 55806 (May 23, 2007), 72 FR 30406 (the "Notice").

⁴ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78o-3(b)(6).

⁶ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

⁷ 17 CFR 242.611.

⁸ A "trade-through" is "the purchase or sale of an NMS stock during regular trading hours, either as principal or agent, at a price that is lower than a protected bid or higher than a protected offer." See 17 CFR 242.600(b)(77).