

- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR–NASD–2007–010 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–2007–010. 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 offices 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–2007–010 and should be submitted on or before March 13, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7–2841 Filed 2–16–07; 8:45 am]

**BILLING CODE 8010–01–P**

## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34–55280; File No. SR–NASD–2007–003]

### **Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Fees and Credits for the NASD/BSE Trade Reporting Facility**

February 12, 2007.

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 January 16, 2007, the National Association of Securities Dealers, Inc. (“NASD”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by NASD. NASD filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b–4(f)(6) thereunder,<sup>4</sup> which renders it 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 adopt a new NASD Rule 7000D Series relating to fees and credits for the Trade Reporting Facility (“NASD/BSE TRF”) established by NASD and the Boston Stock Exchange (“BSE”). The text of the proposed rule change is available at [www.nasd.com](http://www.nasd.com), NASD, 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**

On December 13, 2006, the Commission approved SR–NASD–2006–115,<sup>5</sup> which established rules relating to the new NASD/BSE TRF. The NASD/BSE TRF will provide NASD members with another mechanism for reporting to NASD locked-in transactions in exchange-listed securities effected otherwise than on an exchange. It is anticipated that the NASD/BSE TRF will commence operation in February 2007 upon successful completion of system testing and certification. The instant proposed rule change would adopt a new NASD Rule 7000D Series relating to fees and credits applicable to the NASD/BSE TRF.

NASD is proposing that under new Rule 7002D there will be no transaction fee for reporting locked-in trades to the NASD/BSE TRF in securities listed on the New York Stock Exchange (“Tape A”), the American Stock Exchange (“Tape B”), and the Nasdaq Exchange (“Tape C”). Although NASD is not required to file a proposed rule change where no fees are to be assessed, for members' convenience and to avoid potential confusion with the fee structures of other NASD facilities, NASD is proposing Rule 7002D to clarify that there will be no charge for use of the NASD/BSE TRF to report locked-in transactions in exchange-listed securities effected otherwise than on an exchange. The text of proposed Rule 7002D is identical to the text of current Rule 7002C relating to the NASD/NSX TRF.

In addition, NASD is proposing a transaction credit program under new Rule 7001D that is identical to the existing transaction credit program for the NASD/Nasdaq TRF under Rule 7001B.<sup>6</sup> NASD members reporting trades in Tape A, Tape B and Tape C stocks to the NASD/BSE TRF will receive a 50% pro rata credit on market data revenue earned by the NASD/BSE TRF with respect to those trade reports after deducting the amount, if any, that the Trade Reporting Facility pays to the

<sup>5</sup> See Securities Exchange Act Release No. 54932 (December 13, 2006), 71 FR 76409 (December 20, 2006)(order).

<sup>6</sup> See Securities Exchange Act Release No. 54353 (August 23, 2006), 71 FR 51255 (August 29, 2006).

NASD also notes that the proposed transaction credit program is substantially equivalent to the existing transaction credit program for the NASD/NSX TRF under Rule 7001C. The only difference between the two programs is that under the NASD/NSX TRF transaction credit program, members receive 50% of gross revenue.

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

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b–4(f)(6).

<sup>13</sup> 17 CFR 200.30–3(a)(12).

Consolidated Tape Association or the Nasdaq Securities Information Processor for capacity usage. Credits will be paid on a quarterly basis. To the extent that market data revenue is subject to any adjustment, credits may be adjusted accordingly.

Tape A and Tape B revenue is currently distributed to NASD and the exchanges based on number of trades reported, while Tape C revenue is distributed based on an average of the number of trades and number of shares reported. Thus, under the proposed program, the Tape A and Tape B revenue attributable to a member will be based on number of trades reported, while the Tape C revenue attributable to a member would be based on number of trades and number of shares reported. A member will receive 50% of the revenue attributable to it in each of the three tapes.

NASD filed the proposed rule change for immediate effectiveness. NASD proposes to implement the proposed rule change on the first day of operation of the NASD/BSE TRF, which is currently anticipated to be in February 2007.

## 2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,<sup>7</sup> in general, and with Section 15A(b)(5) of the Act,<sup>8</sup> in particular, which requires, among other things, that NASD rules provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that NASD operates or controls. NASD believes that the proposed rule change is a reasonable and equitable fee and credit structure in that there will be no fees charged for trade reporting to the NASD/BSE TRF and the proposed transaction credit program is identical to existing credits for the NASD/Nasdaq TRF.

### *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

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 Act<sup>9</sup> and Rule 19b-4(f)(6) thereunder.<sup>10</sup> 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.

NASD has asked that the Commission waive the 30-day operative delay set forth in Rule 19b-4(f)(6)(iii) under the Act<sup>11</sup> to allow the proposed rule change to be implemented on the first day of operation of the NASD/BSE TRF, which is currently anticipated to be in February 2007. The Commission believes such waiver is consistent with the protection of investors and the public interest, for it will allow the proposed fees and credits to be in place at the time NASD begins operating the NASD/BSE TRF. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.<sup>12</sup>

## 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-2007-003 on the subject line.

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>12</sup> For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E7-2852 Filed 2-16-07; 8:45 am]

**BILLING CODE 8011-01-P**

<sup>7</sup> 15 U.S.C. 7o-3.

<sup>8</sup> 15 U.S.C. 8o-3(b)(5).

<sup>13</sup> 17 CFR 200.30-3(a)(12).