

concerned with these categories of costs. Because OPRA, as an administrative committee of exchanges, does not account for any assets of its own, it does not capitalize any of its costs but instead, simply passes them on to the exchanges. However, OPRA believes that the concept of capitalized costs is an appropriate factor to be taken into account in determining what should be a proper participation fee. Accordingly, the first factor proposed to be included in the Plan for this purpose is to consider what would have been amortized as OPRA's capital expenditures over the past five years if OPRA were subject to generally accepted accounting principles. OPRA believes that five years is an appropriate time frame for this purpose not only because it represents a reasonable life for the kinds of computer hardware and software assets that make up the OPRA system, but also because it is a short enough period to provide a reasonable basis for determining how much of OPRA's past expenses should be shared by a new party.

The next factor proposed to be considered is an assessment of costs incurred and to be incurred by OPRA in connection with any modifications to the OPRA system necessary to accommodate the new party, unless these costs have otherwise been paid or reimbursed by the new party. This, too, is a cost-based factor, and reflects that it is appropriate for a new party to pay the costs uniquely associated with its becoming a party.

Finally, OPRA proposes that the determination of the participation fee would also take into account previous fees paid by other new parties. Of course, the closer in time any such prior fees were paid and the greater the similarity of the circumstances between the participation of the other parties and the party that is to pay the participation fee under consideration, the greater will be the weight given to this factor, in the interest of fairness and consistency.

Although the participation fee to be paid by ISE will not be payable unless and until specific standards for determining the fee have been approved by the Commission, ISE and the other parties have had discussions concerning what would be the amount of the fee if the standards proposed in this amendment were approved, and they have reached agreement on both the amount of the fee and the terms of payment.

## II. Implementation of the Plan Amendment

OPRA intends to make the proposed amendment to the Plan reflected in this

filing effective immediately upon the approval of the amendment by the Commission pursuant to Rule 11Aa3-2 under the Act.<sup>5</sup>

### III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed Plan amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, and all written statements with respect to the proposed Plan amendment that are filed with the Commission, and all written communications relating to the proposed Plan amendment between the Commission and any person, other than those 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 the filing also will be available at the principal offices of OPRA. All submissions should refer to File No. SR-OPRA-00-08 and should be submitted by October 24, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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**BILLING CODE 8010-01-M**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43346; File No. SR-NASD-00-33]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the National Association of Securities Dealers, Inc. to Amend NASD Rule 3340 to Prohibit Publication of Quotations or Indications of Interest in a Security During a Trading Halt

September 26, 2000.

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 June 7, 2000, the National Association of Securities Dealers, Inc. ("NASD" or

"Association"), through its wholly owned subsidiary, NASD Regulation, Inc. ("NASD Regulation"), 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 Regulation. On August 2, 2000, NASD Regulation amended the proposal.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation proposes to amend NASD Rule 3340 to prohibit the publication by members of quotations or indications of interest for a security during a trading halt. The text of the proposed rule change is below. Proposed new language is in italics. Proposed deletions are in brackets.

#### 3340. Prohibition on Transactions, Publication of Quotations, or Publication of Indications of Interest During Trading Halts

No member or person associated with a member shall, directly or indirectly, effect any transaction or *publish a quotation, a priced bid and/or offer, an unpriced indication of interest (including "bid wanted" and "offer wanted" and name only indications), or a bid or offer, accompanied by a modifier to reflect unsolicited customer interest*, in [a] any security as to which a trading halt is currently in effect.

\* \* \* \* \*

#### 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 Regulation 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.

<sup>3</sup> See August 2, 2000 letter from Kathleen A. O'Mara, Assistant General Counsel, NASD Regulation to Katherine A. England, Assistant Director, Division of Market Regulation, SEC ("Amendment No. 1"). Amendment No. 1 broadened the scope of the proposed rule change.

<sup>5</sup> 17 CFR 240.11Aa3-2.

<sup>6</sup> 17 CFR 200.30-3(a)(29).

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

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

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to expressly prohibit members from publishing quotations or indications of interest in a security during a trading halt. Currently, NASD Rule 3340 prohibits members from effecting a transaction in a security during a trading halt, but does not expressly state that members are prohibited from publishing quotations or indications of interest.<sup>4</sup> However,

<sup>4</sup> The Commission may impose trading suspensions in the United States securities markets under Section 12(k) of the Act. See 15 U.S.C. 781(k).

NASD Rule 4120 provides that Nasdaq may halt trading: (1) in the over-the-counter market of a security listed on Nasdaq to permit the dissemination of material news; or (2) in the over-the-counter market of a security listed on a national securities exchange during a trading halt imposed by such exchange to permit the dissemination of material news; or (3) by (i) Consolidated Quotation System ("CQS") market makers in a CQS security because of an order imbalance or influx ("operational trade halt"); or (ii) Nasdaq market makers in a security listed on Nasdaq, when the security is a derivative or component of a CQS security and a national securities exchange imposes an operational trading halt in that CQS security; or (4) in an American Depository Receipt ("ADR") or other security listed on Nasdaq, when the Nasdaq-listed security or the security underlying the ADR is listed on or registered with a national or foreign securities exchange or market, and the national or foreign securities exchange or market, or regulatory authority overseeing such exchange or market, halts trading in such security for regulatory reasons; or (5) in a security listed on Nasdaq when Nasdaq requests from the issuer information relating to: (i) material news; (ii) the issuer's ability to meet Nasdaq listing qualification requirements, as set forth in NASD Rule 4300 and 4400 Series; or (iii) any other information which is necessary to protect investors and the public interest. See also Securities Exchange Act Release No. 42806 (May 22, 2000), 65 FR 34518 (May 30, 2000) (SR-NASD-99-33), which establishes Nasdaq's trade and quote halt authority in certain specific circumstances in securities included in the OTC Bulletin Board Service ("OTCBB"), and *Notice to Members 99-69* soliciting comments on whether NASD Regulation should have authority to halt trading in non-Nasdaq, non-OTCBB, over-the-counter securities under certain circumstances.

NASD Rules 3310<sup>5</sup> and 3320,<sup>6</sup> respectively, state that members are required to enter only bona fide quotations and honor such quotations if presented with an order. Thus, if during a trading halt, a member that is publishing a quotation for a security is presented with a liability order for such security, the member would be faced with the choice of either honoring its quote and violating the rule prohibiting transactions in a security during a trading halt, or complying with the trading halt rule but violating the Firm Quote Rule. In addition, the entry of quotations or indications of interest while there is a trading halt in a security could be potentially misleading. To prevent this from happening, NASD Regulation is proposing that NASD Rule 3340 be amended to expressly state that members are prohibited from publishing quotations or indications of interest during a trading halt.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>7</sup> which requires, among other things, that the Association's 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 NASD believes that, under the proposed rule change, preventing the publication of quotations or indications of interest during a trading halt will prevent members from seeking to trade at a time

<sup>5</sup> NASD Rule 3310 states that: [n]o member shall publish or circulate, or cause to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind which purports . . . to quote the bid price or asked price for any security, unless such member believes that such quotation represents a bona fide bid for, or offer of, such security \* \* \*.

NASD Rule IM-3310 states, among other things, that: [i]t would be inconsistent with the above provisions for a member, for itself or for any other person, to publish or circulate or to cause to be published or circulated, by any means whatsoever, any quotation for any security without having reasonable cause to believe that such quotation is a bona fide quotation, is not fictitious and is not published or circulated or caused to be published or circulated for any fraudulent, deceptive or manipulative purpose. IM-3310 also provides: "[f]or the purposes of this interpretation, the term 'quotation' shall include any bid or offer or any formula, such as 'bid wanted' or 'offer wanted,' designed to induce any person to make or submit any bid or offer."

<sup>6</sup> NASD Rule 3320 ("Firm Quote Rule") states that: [n]o member shall make an offer to buy from or sell to any person any security at a stated price unless such member is prepared to purchase or sell, as the case may be, at such price and under such conditions as are stated at the time of such offer to buy or sell.

<sup>7</sup> 15 U.S.C. 78o-3(b)(6).

when they cannot execute a trade. Thus, the proposal is designed to protect investors and to insure the integrity of quotations by preventing fictitious or misleading quotations.

*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*

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 NASD 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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-00-33 and should be submitted by October 24, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43344; File No. SR-NASD-00-23]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the National Association of Securities Dealers, Inc. Relating to Amendments to Order Audit Trail System Rules

September 26, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 19, 2000, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned subsidiary, NASD Regulation, Inc. ("NASD Regulation"), 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. On September 5, 2000, NASD Regulation amended its proposal.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to amend NASD Rules 6951, 6954, 6955 and 9610. The proposed rule change would: (1) provide that the time of order origination and receipt for an electronic order is the time the order is captured by a member's electronic order-routing or execution system; for a manual order that is fewer than 10,000 shares, the time of order origination and receipt is the time the order is received by the

member's trading desk or trading department for execution or routing purposes; and for a manual order that is 10,000 shares or greater, the time of order origination and receipt is the time the order is received by the member from the customer; (2) exclude certain members from the definition of "Reporting Member" for those orders that meet specified conditions and are recorded and reported to the Order Audit Trail System ("OATS") by another member; (3) require any receiving reporting member, including electronic communications networks ("ECNs"), that receive routed orders, electronically or manually, to capture and report a routed order identifier; and (4) permit NASD Regulation to grant exemptive relief from the OATS reporting requirements to members that meet specified criteria.

The text of the proposed rule change follows. Proposed new rule language is in italics; proposed deletions are in brackets.

#### NASD Systems and Programs

##### 6950. Order Audit Trail System

##### 6951. Definitions

For purposes of Rules 6950 through 6957:

(a) through (m) No Change.  
(n) "Reporting Member" shall mean a member that receives or originates an order and has an obligation to record and report information under Rules 6954 and 6955. *A member shall not be considered a Reporting Member in connection with an order, if the following conditions are met:*

*(1) the member engages in non-discretionary order routing process, pursuant to which it immediately routes, by electronic or other means, all of its orders to receiving Reporting Member;*

*(2) the members does not direct and does not maintain control over subsequent routing or execution by the receiving Reporting Member;*

*(3) the receiving Reporting Member records and reports all information required under Rules 6954 and 6955 with respect to the orders; and*

*(4) the member has a written agreement with the receiving Reporting Members specifying the respective functions and responsibilities of each part to affect full compliance with the requirements of Rules 6954 and 6955.*

##### 6954. Recording of Order Information

(a) No Change.  
(b) Order Origination and Receipt.  
Unless otherwise indicated, the following order information must be recorded under this Rule when an order is received or originated. *For purpose of this Rule, the order origination and receipt time for an electronic order is the time the order is captured by a member's electronic order-routing or*

*execution system; for a manual order that is fewer than 10,000 shares, the order origination and receipt time is the time the order is received by the member's trading desk or trading department for execution or further routing purposes; and for a manual order that is 10,000 shares or greater, the order origination and receipt time is the time the order is received by the member from the customer.*

(1) through (18) No Change.

(c) Order Transmittal.

Order information required to be recorded under this Rule when an order is transmitted includes the following.

(1) and (2) No Change.

(3) When a member electronically transmits an order for execution on an Electronic Communications Network:

(A) the transmitting Reporting Member and shall record:

(i) the fact that the order was transmitted to an Electronic Communications Network.

(ii) the order identifier assigned to the order by the Reporting Member.

(iii) the maker participant symbol assigned by the Association to the Reporting Member.

(iv) the market participant symbol assigned by the Association to the member to which the order is transmitted,

(v) the date the order was first originated or received by the Reporting Member,

(vi) the date and time the order is transmitted, and

(vii) the number of shares to which the transmission applies; and

(B) the receiving Reporting Member operating the Electronic Communications Network shall record:

(i) the fact that the order was received by an Electronic Communications Network,

(ii) the order identifier assigned to the order by the member that transmits the order,

(iii) [(ii)] the market participant symbol assigned by the Association to the transmitting Reporting Member, and

(iv) [(iii)] other information items in Rule 6954(b) that apply with respect to such order, which must include information items (1), (2), (3), (6), (7), (8), (10), (11), (12), (13), (15), and (16).

(4) When a member manually transmits an order to another member, other than to an Electronic Communications Network:

(A) the transmitting Reporting Member shall record:

(i) the fact that the order was transmitted manually,

(ii) the order identifier assigned to the order by the Reporting Member,

(iii) the market participant symbol assigned by the Association to the Reporting Member,

(iv) the market participant symbol assigned by the Association to the member to which the order is transmitted,

(v) the date the order was first originated or received by the Reporting Member,

(vi) the date and time the order is transmitted,

(vii) the number of shares to which the transmission applies, and

(viii) for each order to be included in a bunched order, the bunched order route indicator assigned to the bunched order by the Reporting Member; and

(B) the receiving Reporting Member shall record, in addition to all other information

<sup>8</sup> 17 CFR 2000.30-3(a)(12).

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

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

<sup>3</sup> See letter from Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated September 5, 2000 ("Amendment No. 1"). Amendment No. 1 proposed substantive changes to the proposed rule language, including the definition of the time of receipt for manual block orders of 10,000 shares or greater, and the provisions for exemptive relief.