

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-2006-120 and should be submitted on or before December 18, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Nancy M. Morris,
Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54778; File No. SR-NASD-2006-127]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt a New NASD Rule 7000C Series Relating to Fees and Credits for the Trade Reporting Facility Established by NASD and the National Stock Exchange (NASD/NSX TRF)

November 17, 2006.

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 November 15, 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 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 Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders it effective upon filing with the Commission.⁵ 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 7000C Series relating to fees and credits for the Trade Reporting Facility ("NASD/NSX TRF") established by NASD and the National Stock Exchange ("NSX"). The text of the proposed rule change is available at <http://www.nasd.com>, at the principal offices of NASD, and at 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 November 6, 2006, the Commission approved SR-NASD-2006-108,⁶ which proposed rules relating to the new NASD/NSX TRF. The NASD/NSX TRF will provide NASD members another mechanism for reporting to NASD over-the-counter transactions in exchange-listed securities. The NASD/NSX TRF will only accept locked-in trades. The NASD/NSX TRF will likely accept trade reports for Nasdaq-listed securities on the first day of operation and for non-Nasdaq exchange-listed securities at a later date, which will be announced within 90 days of Commission approval. However, it is possible that the NASD/NSX TRF will accept trade reports in all exchange-

listed securities on the first day of operation.

The instant proposed rule change would adopt a new NASD Rule 7000C Series relating to fees and credits applicable to the NASD/NSX TRF. NASD proposes that under new NASD Rule 7002C, there will be no transaction fee for reporting locked-in trades to the NASD/NSX 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 NASD Rule 7002C to clarify that there will be no charge for use of the NASD/NSX TRF to report locked-in transactions in exchange-listed securities effected otherwise than on an exchange.

In addition, NASD is proposing a transaction credit program under proposed new NASD Rule 7001C. NASD members reporting trades in Tape A, Tape B and Tape C stocks to the NASD/NSX TRF will receive a 50% pro rata credit on gross market data revenue earned by the NASD/NSX TRF with respect to those trade reports. 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 the number of trades reported, while Tape C revenue is distributed based on an average of 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 gross revenue attributable to it in each of the three tapes. "Gross revenue" is the revenue received by the NASD/NSX TRF from the three tape associations after the tape associations deduct allocated support costs and unincorporated business costs.

The proposed transaction credit program is identical to the existing transaction credit program for the NSX, which provides a 50% transaction credit on gross revenues generated by transactions in Tape A, Tape B and Tape C securities and is allocable to NSX members on a pro rata basis based

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ NASD gave the Commission written notice of its intent to file the proposed rule change on November 2, 2006.

⁶ See Securities Exchange Act Release No. 54715 (November 6, 2006), 71 FR 66354 (November 14, 2006) (approval order).

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

upon the revenue generated by NSX members in the three tapes.⁷

NASD filed the proposed rule change for immediate effectiveness. NASD proposes to implement the proposed rule change (1) for Nasdaq-listed securities on the first day of operation of the NADS/NSX TRF, which is currently anticipated to be in November 2006, and (2) for non-Nasdaq exchange-listed securities on the day on which the NASD/NSX TRF commences operation with respect to such securities.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,⁸ in general, and with Section 15A(b)(5) of the Act,⁹ 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/NSX TRF for locked-in transactions in exchange-listed securities effected otherwise than on an exchange, and the proposed transaction credit program is identical to existing credits for the NSX.

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.

⁷ See Securities Exchange Act Release Nos. 54194 (July 24, 2006), 71 FR 43258 (July 31, 2006) (SR-NSX-2006-10), and 53860 (May 24, 2006), 71 FR 31250 (June 1, 2006) (SR-NSX-2006-07). "Gross revenue" is defined under the existing NSX program the same way as under the proposed program for the NASD/Nasdaq TRF.

NASD also notes that the proposed transaction credit program is substantially equivalent to the existing transaction credit program for the NASD/Nasdaq TRF under NASD Rule 7001B. The only difference between the two programs is that under the NASD/Nasdaq TRF transaction credit program, members receive 50% of revenue after deducting any amounts that the NASD/Nasdaq TRF will be required to pay to the Consolidated Tape Association or the Nasdaq Securities Information Processor for capacity usage. Under the proposed transaction credit program for the NASD/NSX TRF, such expenses will not be deducted.

⁸ 15 U.S.C. 78o-3.

⁹ 15 U.S.C. 78o-3(b)(5).

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 Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹ 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 contained in Rule 19b-4(f)(6)(iii) under the Act.¹² The Commission believes such waiver is consistent with the protection of investors and the public interest, for it will allow NASD to implement the proposed rule change on the first day of operation of the NASD/NSX TRF. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.¹³

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-2006-127 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission,

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² 17 CFR 240.19b-4(f)(6)(iii).

¹³ 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).

100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASD-2006-127. 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-2006-127 and should be submitted on or before December 18, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Nancy M. Morris,
Secretary.

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34792]

Portland & Western Railroad, Inc.— Acquisition and Operation Exemption—Union Pacific Railroad Company

Portland & Western Railroad, Inc. (P&W), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire a permanent, exclusive rail freight operating easement from Union Pacific Railroad Company (UP) to operate over an approximately 5-mile rail line between milepost 749.95 in Tigard, OR, and milepost 755.43 in

¹⁴ 17 CFR 200.30-3(a)(12).