

the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative on 30 days from the date on which it was filed, or such shorter time as the Commission may designate,<sup>11</sup> it has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>12</sup> and Rule 19b-4(f)(6)<sup>13</sup> thereunder. 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.

The CHX has requested that the Commission accelerate the operative date. The Commission believes that it is consistent with the protection of investors and the public interest and therefore finds good cause to designate the proposal to become immediately operative upon filing. Acceleration of the operative date will ensure that the CHX is able to operate in accordance with the terms and conditions of the Plan. For these reasons, the Commission finds good cause to designate that the proposal become operative immediately upon filing.<sup>14</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. 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 persons, 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 CHX. All submissions should refer to the File No. SR-CHX-00-25 and should be submitted by October 5, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>15</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34-43263; File No. SR-NASD-00-53]**

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Extension of the Effective Date of Phase Three for Order Audit System Rules

September 8, 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 August 31, 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. The Commission in 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 Regulation proposes to amend Rule 6957 to extend the effective date of the implementation of Phase Three of the Order Audit Trail System ("OATS") Rules to December 15, 2000.

Below is the text of the proposed rule changes. Proposed new language is underlined; proposed deletions are in brackets.

#### NASD Systems and Programs

##### 6950. Order Audit Trail System

\* \* \* \* \*

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

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

#### 6957. Effective Date

The requirements of the Order Audit Trail System shall be effective in accordance with the following schedule:

- (a) and (b) No change.
- (c) Manual Orders.

The requirements of the Order Audit Trail System shall be effective on *December 15, 2000* [October 31, 2000], for all manual orders, provided that firms shall be required to report information item (18) specified in Rule 6954(b) only to the extent such item is available to them and shall not be required to record and report information items (4) and (5) specified in Rule 6954(b) and information item (1) specified in Rule 6954(c).

- (d) Rule 3110.

The requirements of Rule 3110(h)(1)(A) and Rule 3110(h)(1)(B) shall be effective on March 1, 1999, and the requirements of Rule 3110(h)(1)(C) shall be effective on *December 15, 2000* [October 31, 2000]. The requirements of Rule 3110(h)(2) and Rule 3110(h)(3) shall be effective on March 1, 1999.

#### 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.

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

###### 1. Purpose

On March 6, 1998, the SEC approved NASD OATS Rules 6950 through 6957.<sup>3</sup> OATS provides a substantially enhanced body of information regarding orders and transactions that improves NASD Regulation's ability to conduct surveillance and investigations of member firms for violations of Association rules. In addition, OATS is intended to fulfill one of the undertakings contained in the order issued by the SEC relating to the settlement of an enforcement action against the NASD for failure to

<sup>3</sup> See Securities Exchange Act Release No. 39729, 63 FR 12559 (March 13, 1998) (order approving File No. SR-NASD-97-56).

<sup>4</sup> See In the Matter of National Association of Securities Dealers, Inc., Securities Exchange Act Release No. 37538 (August 8, 1996); Administrative Proceeding File No. 3-9056 ("SEC Order").

<sup>5</sup> *Id.*

<sup>11</sup> The Exchange requested the Commission to waive 5 day pre-filing notice requirement and 30-day operative period. See Amendment No. 1, *supra* n.3.

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19-4(f)(6).

<sup>14</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>15</sup> 17 CFR 200.30-3(a)(12).

adequately enforce its rules.<sup>4</sup> Pursuant to the SEC Order, OATS is required, at a minimum, to (1) provide an accurate, time-sequenced record of orders and transactions, beginning with the receipt of an order at the first point of contact between the broker/dealer and the customer or counterparty and further documenting the life of the order through the process of execution, and (2) provide for market-wide synchronization of clocks used in connection with the audit trail.<sup>5</sup>

In general, OATS imposes obligations on member firms to record in electronic form and to report to NASD Regulation certain information with respect to orders originated, received, transmitted, modified, canceled, or executed ("reportable events") by NASD members relating to a Nasdaq Stock Market, Inc. ("Nasdaq") equity security. This information is integrated with quote information and transaction information reported to the Automated Confirmation Transaction Service ("ACT")<sup>6</sup> to provide the Association with an accurate, time-sequenced record of orders and other transactions.

The effective dates for OATS requirements are set forth in NASD Rule 6957, which provides for different phases of implementation. All members were required to synchronize their computer system clocks and all mechanical clocks that record times for regulatory purposes by August 7, 1998, and July 1, 1999, respectively. In addition, the implementation schedule required that electronic orders received at the trading department of a member that is a market maker in the subject securities and those received by electronic communications networks ("ECNs") be entered into OATS as of March 1, 1999 ("Phase One"). Not all information relating to electronic orders received by market makers was required to be reported to OATS during Phase One. Information items relating to all electronic orders, however, was required to be reported to OATS by August 1, 1999 ("Phase Two"). Under the current implementation schedule, the OATS rules will apply to all manual orders on October 31, 2000 ("Phase Three").<sup>7</sup>

Since the implementation of OATS, NASD Regulation has been closely

reviewing OATS activities with the goal of identifying ways in which to improve OATS and enhance the effectiveness of OATS as a regulatory tool. In this regard, NASD Regulation has proposed certain changes to OATS that it believes will enhance NASD Regulation's automated surveillance for compliance with trading and market making rules such as the NASD's Limit Order Protection Interpretation, the SEC's Order Handling Rules, and a member firm's best execution obligations.<sup>8</sup>

## 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>9</sup> which requires, among other things, that the Association's rules 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. NASD Regulation believes that extending the effective date of Phase Three implementation of OATS will provide the additional time necessary to fully analyze and consider the proposed changes to OATS rules and determine whether the proposed rule changes are appropriate.

### *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.

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

NASD Regulation has neither solicited nor received written comments on the proposed rule change.

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

Pursuant to Section 19(b)(3)(A) of the Act<sup>10</sup> and Rule 19b-4(f)(6) thereunder,<sup>11</sup> the proposed rule change has become effective upon filing as it effects a change that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative for 30 days from the date of filing, and the Association

provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date.

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.

## 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 No. SR-NASD-00-53 and should be submitted by October 5, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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<sup>4</sup> ACT is an automated system owned and operated by Nasdaq that captures transaction information in real-time.

<sup>7</sup> On March 9, 2000, NASD Regulation filed a proposed amendment with the Commission for immediate effectiveness to extend the implementation date of Phase Three from July 31, 2000 to October 31, 2000. See Securities Exchange Act Release No. 42515 (March 10, 2000), 65 FR 14638 (March 17, 2000).

<sup>8</sup> See File No. SR-NASD-00-23 (currently pending before the Commission).

<sup>9</sup> 15 U.S.C. 78o-3(b)(6).

<sup>10</sup> 15 U.S.C. 78s(b)(3)(A).

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

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