

class or type of security to which the exchange extends UTP. The Exchange has represented that it meets this requirement because it deems the MACRO Tradeable Shares to be equity securities, thus rendering trading in the MACRO Tradeable Shares subject to the Exchange's existing rules governing the trading of equity securities.

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,<sup>15</sup> which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotations for and last sale information regarding the MACRO Tradeable Shares are disseminated through the facilities of the CTA and the Consolidated Quotation System. Furthermore, the IIV, updated to reflect changes in currency exchange rates, is calculated by Amex and published via the facilities of the Consolidated Tape Association on a 15-second delayed basis throughout the trading hours for the MACRO Tradeable Shares. In addition, if the listing market halts trading when the IIV is not being calculated or disseminated, the Exchange would halt trading in the MACRO Tradeable Shares.

The Commission notes that, if the MACRO Tradeable Shares should be delisted by the listing exchange, the Exchange would no longer have authority to trade the MACRO Tradeable Shares pursuant to this order.

In support of this proposal, the Exchange has represented that its surveillance procedures are adequate to properly monitor Exchange trading of the MACRO Tradeable Shares. This approval order is conditioned on the Exchange's adherence to this representation.

In addition, the Commission recently approved the trading of the MACRO Tradeable Shares on the Exchange pursuant to UTP for a pilot period of three months.<sup>16</sup> In the Pilot Order, the Commission noted that exchanges that trade commodity-related securities generally have in place surveillance arrangements with markets that trade the underlying securities. In its proposal to trade the MACRO Tradeable Shares for a pilot period, the Exchange represented that it was in the process of completing these surveillance

arrangements and expected to do so "in the near future." The Exchange recently provided the Commission with evidence that it has completed these surveillance arrangements.

The Commission finds good cause for approving this proposal before the thirtieth day after the publication of notice thereof in the **Federal Register**. As noted previously, the Commission previously found that the listing and trading of the MACRO Tradeable Shares on Amex and the trading of the MACRO Tradeable Shares on NYSE Arca pursuant to UTP are consistent with the Act. The Commission presently is not aware of any regulatory issue that should cause it to revisit those findings or would preclude the continued trading of the MACRO Tradeable Shares on the Exchange pursuant to UTP. Therefore, accelerating approval of this proposal should benefit investors by continuing the additional competition in the market for the MACRO Tradeable Shares.

#### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>17</sup> that the proposed rule change (SR-NASDAQ-2007-048), be and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>18</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55745; File No. SR-NASD-2007-030]

#### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Trade Reporting Obligations for Transactions in Foreign Equity Securities

May 11, 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 April 20, 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, II, and III below, which Items have been substantially prepared by NASD. NASD has designated the proposed rule change as "constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule" under Section 19(b)(3)(A)(i) of the Act<sup>3</sup> and Rule 19b-4(f)(1) thereunder,<sup>4</sup> which renders the proposal effective upon receipt of this filing by 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 is proposing to adopt a new paragraph (g) to Rule 6620 to codify a member's trade reporting obligations with respect to transactions in foreign equity securities. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

\* \* \* \* \*

#### 6600. OVER-THE-COUNTER EQUITY SECURITIES

\* \* \* \* \*

#### 6620. Transaction Reporting

(a) through (f) No change.

(g) *Transactions in Foreign Equity Securities*

(1) *For purposes of this paragraph, the term "foreign equity security" means any OTC Equity Security that is issued by a corporation or other entity incorporated or organized under the laws of any foreign country.*

(2) *Transactions in foreign equity securities shall be reported to the OTC Reporting Facility unless:*

(A) *The transaction is executed on and reported to a foreign securities exchange; or*

(B) *the transaction is executed over the counter in a foreign country and is reported to the regulator of securities markets for that country.*

\* \* \* \* \*

#### 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

<sup>15</sup> 15 U.S.C. 78k-1(a)(1)(C)(iii).

<sup>16</sup> See Securities Exchange Act Release No. 55386 (March 2, 2007), 72 FR 10801 (March 9, 2007) (SR-NASDAQ-2007-016) (the "Pilot Order").

<sup>17</sup> 15 U.S.C. 78s(b)(2).

<sup>18</sup> 17 CFR 200.30-3(a)(12).

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

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

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

<sup>4</sup> 17 CFR 240.19b-4(f)(1).

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

The purpose of the proposed rule change is to codify existing NASD guidance regarding an NASD member's trade reporting obligations in transactions involving foreign equity securities.

NASD Rule 6620 requires members to transmit to the OTC Reporting Facility last sale reports of transactions in OTC Equity Securities. For purposes of a member's trade reporting obligations under Rule 6620, an OTC Equity Security is "any non-exchange-listed security and certain exchange-listed securities that do not otherwise qualify for real-time trade reporting."<sup>5</sup> This broad definition of OTC Equity Security, by its terms, would include foreign equity securities that are not listed on a U.S. securities exchange and that trade exclusively in foreign markets.

The proposed rule filing would codify the long-held interpretive position taken by NASD that transactions in foreign equity securities<sup>6</sup> are not subject to the trade reporting requirements if (1) the transaction is executed on and reported to a foreign securities exchange or (2) the transaction is executed over the counter in a foreign country and is reported to the regulator of securities markets for that country.<sup>7</sup> Transactions in foreign equity securities that are not reported to a foreign securities exchange or, if executed over the counter in a foreign country, to a foreign securities regulator, must be reported to NASD.<sup>8</sup>

<sup>5</sup> See NASD Rule 6610(d).

<sup>6</sup> The proposed rule change defines "foreign equity security" as any OTC Equity Security that is issued by a corporation or other entity incorporated or organized under the laws of any foreign country.

<sup>7</sup> This position was originally taken with respect to the end-of-day reporting requirements of non-Nasdaq, over-the-counter securities under former Schedule H to NASD's By-Laws. See *NASD Notice to Members 90-58* (September 1990). It was reaffirmed when end-of-day reporting was changed to 90-second transaction reporting. See *OTC Bulletin Board Update* (December 1993).

<sup>8</sup> It is important to note, however, that separate legs of a riskless principal transaction may be subject to different reporting requirements. For example, if a member executes a transaction in a foreign equity security for a customer on a foreign exchange on a riskless principal basis, with the initial leg reported by the foreign exchange, the member would not be required to report that leg of the riskless principal transaction to NASD. However, the second leg (*i.e.*, the transaction

Although many members are aware of and continue to rely on this guidance, NASD recently has received a number of inquiries relating to foreign equity trade reporting requirements. To ensure that all members are aware of their trade reporting obligations regarding foreign equity securities, NASD is proposing to codify this guidance so that, going forward, the rules themselves specifically address foreign equity securities.<sup>9</sup>

NASD has filed the proposed rule change for immediate effectiveness. The effective date and the implementation date will be the date of filing, April 20, 2007.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>10</sup> which requires, among other things, that NASD 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. NASD believes that the proposed rule change provides needed clarification to NASD members regarding their trade reporting obligations with respect to foreign equity securities.

*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.

between the member and the customer) would have to be reported to NASD on a non-tape basis.

<sup>9</sup> NASD also notes that trades reported in the U.S. must be reported in U.S. dollars, regardless of the currency in which the trade occurred. The methodology employed by the member for currency conversion is left to the NASD member; however, the member should document its practice and employ the same method consistently. See *OTC Bulletin Board Update* (December 1993) and *Notice to Members 90-58* (September 1990). See also *Notice to Members 06-70*, at note 5 (December 2006) (noting that, for purposes of reporting to the Order Audit Trail System, members are "permitted to use reasonable business practices for the [currency] conversion; however, members should document their practice regarding currency conversion and should be consistent in their methodology").

<sup>10</sup> 15 U.S.C. 78o-3(b)(6).

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and paragraph (f) of Rule 19b-4 thereunder<sup>11</sup> because the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of NASD. 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. 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-2007-030 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-2007-030. 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

<sup>11</sup> 17 CFR 240.19b-4.

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 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-2007-030 and should be submitted on or before June 7, 2007.

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

**J. Lynn Taylor,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-55742; File No. SR-NYSE-2007-19]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval to a Proposed Rule Change as Modified by Amendment No. 1 Relating to the Waiver of Certain Listing Fees

May 10, 2007.

#### I. Introduction

On February 22, 2007, the New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposal to waive certain listing fees. The proposal was published for comment in the **Federal Register** on March 14, 2007.<sup>3</sup> The Commission received no comments on the proposal. The Exchange filed Amendment No. 1 with the Commission on April 27, 2007.<sup>4</sup> This order provides

notice of and solicits comment on the proposed rule change as modified by Amendment No. 1 and approves the proposal on an accelerated basis.

#### II. Description of the Proposal

The Exchange proposes to amend Section 902.02 of its Listed Company Manual (the "Manual") to provide that there shall be no initial listing fee applicable to (i) Any company listing upon emergence from bankruptcy, or (ii) any company listing its primary class of common stock that is not listed on a national securities exchange but is registered under the Act.

The Exchange also proposes a temporary cap on fees payable by companies listing upon emergence from bankruptcy. Annual fees for such issuers will be billed at a rate of one-fourth of the applicable annual fee rate for the fiscal quarter the issuer lists and for each of the succeeding 12 full fiscal quarters. Further, the total fees (including initial listing fees and annual fees) that may be billed to such an issuer during this period would be subject to a \$25,000 cap in the fiscal quarter in which the issuer lists and in each of the succeeding 12 full fiscal quarters. The exclusions applicable to the standard fee cap, set forth in Section 902.02 under the heading "Total Maximum Fee Payable in a Calendar Year," would also apply to issuers listing upon emergence from bankruptcy.

The Exchange believes that the initial listing fee waiver and fee cap for companies listing upon emergence from bankruptcy are justified by the unique circumstances of those issuers, which, according to the NYSE, among other things, tend to be more sensitive to the initial and continued costs associated with listing because of the desire in bankruptcy proceedings to ensure creditors are paid as much as possible. According to the Exchange, because bankrupt companies face unique challenges in the listing process, the number of companies that will benefit from the fee waiver and lower fee cap applicable to bankrupt companies will be very limited, and the fee cap will apply only during a three-year transitional period, the Exchange does not believe that the treatment this proposal would afford to bankrupt companies constitutes an inequitable or unfairly discriminatory allocation of fees.

In addition, the Exchange believes that waiving initial listing fees for a company listing its primary class of common stock which is registered under

that Act but not listed on a national securities exchange is appropriate and does not constitute an inequitable or unfairly discriminatory allocation of fees. The Exchange anticipates that most companies taking advantage of this waiver will be formerly-listed companies that were delisted as a result of a failure to timely file annual reports with the Commission.<sup>5</sup> The Exchange notes that these companies usually seek to re-list on the Exchange as soon as their filings are up to date.<sup>6</sup> According to the Exchange, because such companies had previously paid initial listing fees to the Exchange or to another national securities exchange, the Exchange believes that to make them pay these fees again would further penalize them unnecessarily.

The Exchange has represented that the proposed rule change would not affect its commitment of resources to its regulatory oversight of the listing process or its regulatory programs. Companies that benefit from one of the proposed waivers would be reviewed for compliance with Exchange listing standards in the same manner as any other company that applies to be listed on the Exchange. The Exchange would conduct a full and independent review of each issuer's compliance with the Exchange's listing standards.

The Exchange also has represented that it does not expect the financial impact of this proposed rule change to be material, either in terms of increased levels of annual fees from transferring issuers or in terms of diminished initial listing fee revenues. A limited number of companies are qualified and seek to list on the Exchange that are either emerging from bankruptcy or have a registered class of common stock but are not currently listed on another market. Accordingly, the proposed rule change will not impact the Exchange's resource commitment to its regulatory oversight

<sup>5</sup> In Amendment No. 1, the Exchange stated that there may occasionally be an initial listing on the Exchange of a company which is trading in the over-the-counter market immediately prior to listing and which was not previously delisted as a result of a failure to timely file annual reports with the Commission. However, in the Exchange's experience, very few such companies meet the Exchange's listing requirements and, therefore, the Exchange expects the number of such listings and the related loss of fee revenue to be immaterial.

<sup>6</sup> In its filing, the Exchange stated that typically, such companies are otherwise in good standing with the Exchange or with another national securities exchange, but fell behind on their reporting obligations under the Act because their auditors or the Commission required restatements of their financial statements. The Commission notes that the timely filing of accurate financial reports under the Act is critical to investors and our national market and assures that investors receive up to date financial information about listed companies.

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

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

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

<sup>3</sup> See Securities Exchange Act Release No. 55421 (March 14, 2007), 72 FR 1350 (the "Notice").

<sup>4</sup> Amendment No. 1 (i) Proposed a clarifying change to the proposed rule text and (ii) added language to the purpose section to clarify the effect of the waiver of listing fees for a company listing its primary class of common stock that is not listed on a national securities exchange but is registered under the Act. The text of Amendment No. 1 is available on the Exchange's Web site (<http://www.nyse.com>), at the Exchange's Office of the