IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[15] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[16] which requires that an exchange have rules designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest. The Commission believes that this proposal should benefit investors by increasing competition among markets that trade the Units.

In addition, the Commission finds that the proposal is consistent with Section 12(f) of the Act,[17] which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.[18] The Commission notes that it previously approved the listing and trading of the Units on Amex.[19] The Commission also finds that the proposal is consistent with Rule 12f–5 under the Act,[20] which provides that an exchange shall not extend UTP to a security unless the exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends UTP. The Exchange has represented that it meets this requirement because it deems the Units to be equity securities, thus rendering trading in the Units 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,[21] 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.

In support of this proposal, the Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Units on the Exchange. In addition, the Exchange represents that it is party to Information Sharing Agreements with NYMEX and ICE Futures for the purpose of providing information in connection with trading in or related to oil futures contracts traded on those markets, and that, to the extent that USOF invests in oil interests traded on other exchanges, the Exchange would enter into information sharing agreements, acceptable to the Commission staff, with those particular exchanges. This approval order is conditioned on the Exchange's adherence to these representations.

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 Units by Amex is consistent with the Act. In addition, the Commission previously found that the trading of the Units by Nasdaq pursuant to UTP on a three-month pilot basis was consistent with the Act. The Commission presently is not aware of any regulatory issue that should cause it to revisit these earlier findings or would preclude the trading of the Units on the Exchange pursuant to UTP. Therefore, accelerating approval of this proposed rule change should benefit investors by creating, without undue delay, additional competition in the market for the Units. For these reasons, the Commission finds good cause to approve the amended proposal on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[22] that the proposed rule change (SR–NASDAQ–2007–045), as modified by Amendment No. 1, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E7–9740 Filed 5–21–07; 8:45 am]

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[15] In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78*l*(f).

[18] Section 12(a) of the Act, 15 U.S.C. 78*l*(a), generally prohibits a broker-dealer from trading a security on a national securities exchange unless the security is registered on that exchange pursuant to Section 12 of the Act. Section 12(f) of the Act excludes from this restriction trading in any security to which an exchange ''extends UTP.'' When an exchange extends UTP to a security, it allows its members to trade the security as if it were listed and registered on the exchange even though it is not so listed and registered.

[19] *See* Amex Order, *supra* note 7.

[20] 17 CFR 240.12f–5.

[21] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[22] 15 U.S.C. 78s(b)(2).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55759; File No. SR–NASD–2007–032]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding NASD's Exemptive Authority Relating to Regulation NMS Trade Reporting Requirements

May 15, 2007.

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 May 10, 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 this proposal as one 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[3] and Rule 19b–4(f)(1) thereunder,[4] 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 is proposing to adopt new NASD Rule 5150 to provide NASD with authority to exempt members from certain new NASD trade reporting requirements for the Alternative Display Facility (''ADF'') and the NASD Trade Reporting Facilities (''TRFs'') relating to Regulation NMS. The text of the proposed rule change is available at NASD, the Commission's Public Reference Room, and *http://www.nasd.com.*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

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 June 29, 2005, the Commission published its release adopting Regulation NMS,[5] which established new substantive rules designed to modernize and strengthen the regulatory structure of the U.S. equities markets. Pursuant to Regulation NMS, the Commission, among other things, adopted Rule 611 (''Order Protection Rule'') to establish protection against trade-throughs for NMS stocks.[6] There currently are nine exceptions and two exemptions to the Order Protection Rule.[7]

NASD does not qualify as a trading center within the meaning of Regulation NMS.[8] However, NASD has a responsibility to enforce requirements under the Act that apply to activity within its regulatory authority. Unlike exchanges that have direct Regulation NMS obligations with respect to the self-regulatory organization trading facilities, NASD has indirect Regulation NMS obligations with respect to all over-the-counter market activity in NMS stocks, including post-trade regulation for compliance with the Order Protection Rule with respect to trading centers that trade report through the ADF or a TRF.

Consistent with Regulation NMS, NASD amended its rules governing trade reporting to the ADF and TRFs to require reporting members to append applicable modifiers to last-sale transaction reports for trades that fall within Rule 611 exceptions and exemptions.[9] The amendments to the ADF trade reporting rules (specifically, Rule 4632A) became operative on March 5, 2007. The amendments to the trade reporting rules relating to the TRFs (specifically, Rules 4632, 4632C, 4632D, and 4632E) will become operative on the Regulation NMS Pilot Stocks Phase Date, which is scheduled to occur on July 9, 2007.[10]

The Financial Information Forum (''FIF'') submitted a comment letter in response to these rule changes.[11] The FIF Letter states that implementation of the new NASD trade reporting modifiers relating to Regulation NMS (specifically, the self-help modifier, the qualified contingent trade modifier, the sub-penny modifier, and the modifier used to distinguish between inbound and outbound intermarket sweep orders) will require additional development efforts and will present a challenge to certain member firms. The FIF Letter further asserts that implementation of the self-help modifiers in particular will be a time-consuming and costly effort and, without substantial development changes, some firms may be forced to not implement self-help to the detriment of their customers. Finally, the FIF Letter states that, if NASD determines that it must have this information for regulatory reasons, firms should be given more time to modify their systems and requests that the compliance date for the new trade report modifiers for purposes of reporting to a TRF be moved to the Regulation NMS Completion Date, which is currently anticipated to be October 8, 2007.

In response to the FIF Letter and in recognition of the technological burdens that the new NASD trade report requirements may impose on some members, NASD is proposing to adopt new Rule 5150 to provide NASD with exemptive authority. Specifically, Rule 5150 would allow members that are unable to complete necessary systems changes by the applicable compliance date to seek a temporary exemption from the new trade report requirements related to Regulation NMS found in Rules 4632, 4632A, 4632C, 4632D, and 4632E. NASD will grant such an exemption only on a firm-by-firm basis, for good cause shown after taking into consideration all relevant factors and only if it is consistent with the protection of investors and the public interest.

In general, the new trade reporting requirements provide critical information for purposes of NASD's Regulation NMS regulatory program. As such, NASD does not intend to grant exemptions under the proposed rule except in exceptional circumstances and only where the requester has demonstrated that it has made best efforts to comply in a timely fashion with the new trade reporting requirements related to Regulation NMS and there is a specific, limited problem or issue preventing the member from achieving full compliance. A member requesting an exemption will be required, among other things, to: (1) Explain why it is unable to complete the necessary systems changes by the applicable compliance date; (2) identify the specific new Regulation NMS-related trade reporting modifier(s) (*e.g.*, self-help) that the firm is unable to implement in a timely manner; and (3) provide an estimated completion date for the outstanding systems work and full compliance. As set forth in the proposed rule, NASD will determine the duration of any exemption, which shall not exceed six months. Moreover, since concerns raised by the industry relate only to certain Regulation NMS-related trade modifiers (the self-help modifier, the qualified contingent trade modifier, the sub-penny modifier, and the modifier used to distinguish between inbound and outbound intermarket sweep orders), NASD will exercise exemptive authority under this rule proposal only to address implementation issues related to these particular modifiers.

NASD intends to exercise the exemptive authority proposed herein on a temporary basis and, as such, the proposed rule change will automatically

[5] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[6] NMS stock is defined in Rule 600(b)(47) of Regulation NMS as ''any NMS security other than an option.'' Rule 600(b)(46) of Regulation NMS defines NMS security as ''any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options.''

[7] *See* 17 CFR 242.611; Securities Exchange Act Release Nos. 54389 (August 31, 2006), 71 FR 52829 (September 7, 2006) (Order Granting an Exemption for Qualified Contingent Trades from Rule 611(a) of Regulation NMS) and 54678 (October 31, 2006), 71 FR 65018 (November 6, 2006) (Order Exempting Certain Sub-Penny Trade-Throughs from Rule 611 of Regulation NMS).

[8] It should be noted that while NASD is not a trading center, market participants that quote in NMS stocks in the ADF are trading centers.

[9] *See generally,* Securities Exchange Act Release Nos. 54537 (September 28, 2006), 71 FR 59173 (October 6, 2006) (SR–NASD–2006–091, amending ADF rules); 55088 (January 11, 2007), 72 FR 2573 (January 19, 2007) (SR–NASD–2007–001, amending ADF rules); 55101 (January 12, 2007), 72 FR 2568 (January 19, 2007) (SR–NASD–2007–002, amending NASD/Nasdaq TRF rules); and 55346 (February 26, 2007), 72 FR 9807 (March 5, 2007) (SR–NASD–2007–014, amending NASD/NSX TRF rules, NASD/BSE TRF rules, and NASD/NYSE TRF rules).

[10] Members may submit trade reports to the TRFs in compliance with the Regulation NMS requirements on a voluntary basis prior to the Pilot Stocks Phase Date.

[11] *See* letter from Manisha Kimmel, Executive Director, FIF, on behalf of the FIF Regulation NMS Working Group, to Nancy M. Morris, Secretary, Commission, dated February 7, 2007, submitted in response to SR–NASD–2007–002 (''FIF Letter'').

sunset one year after the Pilot Stocks Phase Date, currently scheduled to occur on July 9, 2007. NASD has filed the proposed rule change for immediate effectiveness.[12] The proposed rule change will become operative upon filing with the Commission.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[13] which requires, among other things, that NASD 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 believes that the proposed exemptive authority is appropriate because it will allow NASD to address certain implementation issues as they arise.

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

While NASD did not solicit comments on the proposed rule change, as discussed above, NASD did receive a comment letter in connection with SR–NASD–2007–002.[14] NASD is filing the proposed rule change specifically to address this comment letter and the concerns raised by the commenter about the burdens associated with implementation of the new Regulation NMS-related trade report modifiers. As noted above, NASD has determined that the Regulation NMS-related modifiers required under the NASD trade reporting rules are crucial to its regulatory program and does not agree with the commenter that the self-help modifier should be optional. NASD believes that the proposed exemptive authority strikes a fair balance between the needs of NASD's regulatory program and member concerns regarding the timing and burdens of the necessary systems changes. The proposed rule change should alleviate such burdens by affording members additional time, if needed, to make the necessary systems changes relating to the self-help modifier, the qualified contingent trade modifier, the sub-penny modifier, and the modifier used to distinguish inbound and outbound intermarket sweep orders.

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

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act[15] and subparagraph (f)(1) of Rule 19b–4 thereunder,[16] because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. 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.* Please include File Number SR–NASD–2007–032 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–2007–032. 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 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–2007–032 and should be submitted on or before June 12, 2007.

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

Jill M. Peterson,

Assistant Secretary.

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[12] NASD is filing this proposed rule change for immediate effectiveness to allow NASD to address exemptive requests immediately without regard to when the changes to the underlying trade reporting rules are operational.

[13] 15 U.S.C. 78*o*–3(b)(6).

[14] *See* FIF Letter, *supra* note 11.

[15] 15 U.S.C. 78s(b)(3)(A)(i).

[16] 17 CFR 240.19b–4(f)(1).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–55765; File No. SR–NASD–2006–044]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Interpretive Material to NASD Rule 3060 To Require Members To Adopt Policies and Procedures Addressing Business Entertainment

May 15, 2007.

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 April 11, 2006, the National Association of Securities Dealers, Inc. (''NASD'') 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. On April 17, 2007, NASD filed Amendment No. 1 to the proposed rule change.[3] On May 1, 2007, NASD filed Partial Amendment

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced and superseded the original rule filing in its entirety.