

# NASDAQ EXCHANGE OPERATIONAL ISSUES FREQUENTLY ASKED QUESTIONS (FAQs)

Updated January 22, 2008

## **REGULATION OF NASDAQ MEMBERS**

### **General**

#### **When did NASDAQ<sup>®</sup> become operational as a national securities exchange?**

On August 1, 2006, NASDAQ became operational as an exchange for NASDAQ-listed securities (Phase I of exchange operation). Brut and INET became part of the NASDAQ exchange on the exchange operational date for NASDAQ-listed securities.

On October 30, 2006, NASDAQ completed its systems integration for NASDAQ-listed securities. On November 20, 2006, NASDAQ completed the [integration](#) of Brut and INET for non-NASDAQ-listed securities.

[NASDAQ became operational](#) as an exchange in non-NASDAQ listed securities on February 12, 2007 — the same date as NASDAQ systems integration for those securities.

#### **When an order is sent to The NASDAQ Stock Market<sup>®</sup>, are all executions provided to the entering firm considered exchange trades?**

Yes. Since NASDAQ is operational as an exchange in both NASDAQ-listed securities and non-NASDAQ exchange-listed securities, executions on NASDAQ are NASDAQ exchange trades to the entering firm, even if they are routed out to other venues by the NASDAQ routing broker.

### **Rules**

#### **Now that NASDAQ is operational as an exchange, does it have the same marketplace rules it did before?**

NASDAQ [trading rules](#) regarding its quotation and trading systems remain essentially the same. NASDAQ's former trade reporting rules for NASDAQ-listed securities became the rules governing The FINRA/NASDAQ Trade Reporting Facility<sup>™</sup> (TRF) and will be maintained under the Financial Industry Regulatory Authority (FINRA) Rules. Effective March 5, 2007, the FINRA/NASDAQ TRF became operational for both NASDAQ- and non-NASDAQ-listed securities. The ACT system will continue to serve the TRF for Over-the-Counter trade reporting, so firms should not see any change in functionality.

#### **Does NASDAQ have the same rules that FINRA does?**

To make the transition to NASDAQ membership as simple and streamlined as possible, NASDAQ crafted its rules to be very similar to FINRA's. We have minimized changes to those rules to reflect only the new legal status of NASDAQ as an exchange. Thus, all of the NASDAQ membership, conduct, listing and disciplinary rules are substantially identical to the rules that were used when NASDAQ operated as part of FINRA. The approved NASDAQ rules are available in the [NASDAQ Manual Online](#).

#### **Are there any new rules? Are there any new interpretations?**

There are a few new rules that explain how NASDAQ is responsible as a Self Regulatory Organization (SRO), to ensure that NASDAQ is discharging its regulatory authority under the new rules. In addition, there are new rules regarding the process for delisting NASDAQ issuers. Changes have been made to the rules governing NASDAQ to eliminate preferenced orders. In addition, NASDAQ recently adopted rules to limit OATS reporting for proprietary trading firms. See NASDAQ Rule 6950 Series. Other than that, the same rules and interpretations exist as previously under FINRA.

### **What about FINRA Notices? How do they apply?**

FINRA Notices relating to FINRA rules that are similar to new NASDAQ rules should be viewed as indicative of NASDAQ's understanding with respect to the application of such rules. NASDAQ issues its own interpretations with respect to its rules in "Regulatory Alerts".

### **Is a NASDAQ Rules Manual available?**

Yes. The [NASDAQ Rules Manual](#) is available online.

## **Regulation and Firm Regulatory Examinations**

### **Who is going to regulate firms now that NASDAQ is an exchange?**

Now that NASDAQ is an exchange, it is an SRO and is ultimately responsible for NASDAQ member and market regulation. NASDAQ has contracted with FINRA's subsidiary, FINRA Regulation, Inc. for regulatory services. Under contract to NASDAQ, FINRA and its subsidiaries perform market and member regulation services for NASDAQ. This contractual relationship also creates a clear separation between the market operations of NASDAQ and its regulatory functions.

### **My firm is a FINRA member and a NASDAQ member, does that mean that I will have two visits from FINRA — one for FINRA and one for NASDAQ?**

NASDAQ and FINRA plan to coordinate regulatory activities to minimize duplication of efforts to the extent possible. In fact, many NASDAQ rules are subject to an SEC Rule 17d-2 Agreement that will allocate responsibility for enforcement of certain common rules to FINRA.

### **My firm is not a FINRA member and is a member of another SRO. The other SRO is my Designated Examining Authority (DEA). Will this change once my firm is a member of NASDAQ? Will I be examined by both my DEA and by NASDAQ?**

The other SRO will continue to be your firm's DEA and will have Financial and Operations (Finop) responsibility for your firm and responsibility for your firm's conduct on the other SRO and for compliance with that SRO's rules. NASDAQ will have responsibility for your firm's conduct on The NASDAQ Stock Market and for compliance with NASDAQ rules.

## **Clearing Arrangements**

### **If I am a NASDAQ member, does my clearing firm also have to be a NASDAQ member? Does the answer differ if my clearing firm is only clearing trades for me and is not entering my orders into NASDAQ?**

Rule 4618 requires your clearing firm to be a NASDAQ member to clear and settle NASDAQ trades.

## TECHNOLOGY

**Now that NASDAQ is operational as an exchange, and NASDAQ-listed stocks have become “exchange-traded securities,” are quotes and trades in NASDAQ-listed stocks disseminated as part of the Consolidated Quotation System (CQS) and Consolidated Transaction Association (CTA) Plans like securities listed on the NYSE and Amex?**

No. The SEC discussed NASDAQ’s participation in national market system plans in its [approval order](#). There have been no changes to the way NASDAQ-listed securities are quoted and traded. The NASDAQ Unlisted Trading Privileges (UTP) Plan applies to quotes and trades in NASDAQ-listed securities and the CQS and CTA Plans apply to quotes and trades in securities listed on NYSE, Amex and the regional exchanges.

**Now that the exchange is operational, how do quotes and trades executed on NASDAQ appear on the tape?**

There is no change for the UTP data feed: NASDAQ quotes and trades in NASDAQ-listed securities are disseminated with the market center identifier “Q” on the UTP data feed. For the CQS data feed, quotes and trades in NASDAQ appear with a “T” modifier.

**How do trades reported to the TRF appear on the tape?**

Trades in NASDAQ-listed securities reported to the TRF are disseminated via the UTP Trade Report Data Feed<sup>SM</sup> (UTDF<sup>SM</sup>) and are identified with a “D” market center identifier along with an additional sub market center modifier “Q”. Trades in NYSE- and Amex-listed securities reported to the FINRA/NASDAQ TRF are disseminated via the Consolidated Tape System (CTS) data feed and are identified with a “D” market center identifier and a sub-market center identifier of “T”.

**Are there any changes to the Over-the-Counter Bulletin Board or the Pink Sheets now that NASDAQ is operational as an exchange?**

Nothing has changed: OTCBB and Pink Sheets trades are reported to FINRA, not NASDAQ or the FINRA/NASDAQ TRF. Their quotes and trades are part of Level 1 and UTDF and have market center identifiers of “U” for OTCBB and “u” for Pink Sheets.

**Are there any changes to the standard values in the FIX protocol for executions? How are NASDAQ Stock Market trades and Over-the-Counter (OTC) trades identified?**

Yes. The table below describes the Exchange Codes to be used as the standard in FIX protocol versions to differentiate NASDAQ Stock Market trades from OTC trades.

Note: NASDAQ systems do not currently return Exchange Codes on execution messages. However, it is NASDAQ’s understanding that these fields are commonly used between firms, vendors and clearing firms in the marketplace.

	<b>NASDAQ Stock Market “NASDAQ Exchange Executions”</b>	<b>FINRA OTC “OTC Executions”</b>
<b>Reuters codes for &lt;=4.2</b>	OQ	DF
<b>MIC codes for &gt;= 4.3</b>	XNAS	XADF ( <i>pending</i> )

For more information, please refer to the [FIXProtocol.org document](#).

**DTCC/CONTRACT SHEET CHANGES**

**Now that NASDAQ is an exchange, how are NASDAQ trades reflected on DTCC contract sheets?**

NASDAQ exchange trades will continue to be included on the "Over-the-Counter" (OTC) DTCC contract sheets; however, several fields within the contract sheets are updated to explicitly identify NASDAQ exchange trades as such. This usage is also described in the June 21, 2006, DTCC/NSCC [Important Notice A#6259](#).

NSCC has created a new NASDAQ Print Image File to represent NASDAQ exchange trades only. The existing OTC Print Image File will contain Over-the-Counter contracts only. Firms wishing to access the new NASDAQ Print Image File via NSCC's PC WebDirect need not make any changes, it will be available automatically. Firms wishing to directly receive the NASDAQ Print Image as a file from NSCC will need to contact NSCC to set up an additional AutoRoute to do so. This change is also described in [NSCC Important Notice A#6271](#).

NASDAQ Stock Market trades are represented on the OTC Contract Sheet as follows:

NSCC Machine Readable Output (MRO): (Field – Value)

- Originating Market/Trade Source – "XNAS"

Last Market System – "N"=NASDAQ Stock Market

NSCC Print Image File: (Field – Value)

- Trade Source – "NQ"

This is true for all NASDAQ Stock Market trades.

Conversely the following changes will appear on the OTC Contract Sheet for the TRF (ACT) trades as follows:

NSCC MRO Output: (Field – Value)

- Originating Market/Trade Source – "XOTC"
- Last Market System – "A"=TRF

NSCC Print Image File: (Field – Value)

- Trade Source – "TRF"

To understand these changes, please refer to the following chart:

OTC Contract Sheet Final State: NASDAQ Exchange Operation			
System	NSCC Mapping (final)		
	MRO Outputs	MRO Outputs	Print Image File
Venue	Originating Market/Trade Source	Last Market System	Trade Source
	Position 105 - 108	Position 109 - 112	Position N/A
<b>PHASE I – NASDAQ-LISTED SECURITIES (effective 8/1/2006)</b>			
NASDAQ single book for NASDAQ-listed securities	XNAS	N = The NASDAQ Stock Market	NQ
<b>PHASE II - NON-NASDAQ LISTED SECURITIES (effective 2/12/2007)</b>			
NASDAQ single book for non-NASDAQ-listed securities	XNAS	N = The NASDAQ Stock Market	NQ

## **NASDAQ RULES AND REQUIREMENTS**

### **Trade Reporting**

#### **How do I trade report as a member of the NASDAQ exchange?**

Trades executed on NASDAQ are exchange trades. NASDAQ will continue to automatically report trades executed on NASDAQ. Trades executed away from NASDAQ's electronic systems, including internalized trades and trades negotiated between firms, are not exchange trades; they are over-the-counter trades. Reports of these trades can be submitted by broker-dealers to the FINRA/NASDAQ TRF. Firms must be FINRA members in order to use the FINRA/NASDAQ TRF. The ACT system is utilized by the FINRA/NASDAQ TRF for all NASDAQ-listed and other exchange-listed stocks. Thus, technologically and operationally, firms can continue to trade report as they have in the past.

#### **How do I trade report if I am a FINRA member but not a NASDAQ member?**

FINRA members can continue to trade report to the FINRA/NASDAQ TRF as they have to ACT in the past, even if they do not become NASDAQ members.

#### **How do I report riskless principal transactions now that the NASDAQ exchange and the TRF are operational? What is the market of execution for each report?**

- First leg: If the first leg is executed on NASDAQ, it will automatically be reported as an exchange trade. If you execute the first leg away from NASDAQ's electronic system and report it to the FINRA/NASDAQ TRF (ACT), it is an over-the-counter (OTC) trade.
- Second leg: If you elect to report the second leg of a riskless principal transaction to the FINRA/NASDAQ TRF (ACT), you can report the trade as an OTC trade.

#### **Do I have to confirm existing trade reporting agreements with third parties and re-sign all of my Attachment 2 Agreements and Give-up Addendums, now that NASDAQ is operational as an exchange?**

No. As a FINRA member and a NASDAQ market participant, you may have entered into one or more "Attachment 2s" or "Give-up Addendums" with NASDAQ and third parties over the years. Firms are not required to execute revised versions of these agreements with NASDAQ.

Please note that on January 25, 2007, FINRA published [Notice](#) to All TRF, ADF and Other FINRA Facility Participants Regarding AGU and QSR Relationships. Please see the NASDAQ [Regulatory Alert #2007-007](#) to see how this impacts FINRA/NASDAQ TRF subscribers.

### **NASDAQ Short Sale Rule (Rule 3350)**

#### **Which short sale rule applies now that NASDAQ is operational as an exchange, the SEC Rule 10a-1 tick test or the Rule 3350 bid test?**

Neither. The SEC issued a [rule](#) removing price test restrictions on the execution prices of short sales and prohibiting self-regulatory organizations from having a price test. (For more information, please see [NASDAQ RA 2007-067](#).) Both Rule 10a-1 and Rule 3350 have been deleted. The SEC also removed the requirement to mark a sell order "short exempt" if the seller is relying on an exception from a price test. NASDAQ, however, will continue to process any orders flagged as short exempt. NASDAQ has added all NASDAQ-listed securities to the [Regulation SHO Pilot List](#) in order to assist customers with the change.

## **NASDAQ Short Interest Reporting (Rule 3360)**

### **How do I report short interest once I become a NASDAQ member? Does the answer differ depending on whether I am a FINRA member or a member of a non-FINRA Self-Regulatory Organization?**

Each NASDAQ member is required to report its "total" short interest positions in all customer and proprietary accounts in NASDAQ-listed securities pursuant to Rule 3360. Effective September 7, 2007, NASDAQ members are [required](#) to increase the frequency of short interest reporting from monthly to twice a month.

A NASDAQ member that is also a member of FINRA must comply with this rule by filing its short interest directly with FINRA via its Web-based Regulation Filings Application system or the member may choose to satisfy its reporting requirements by entering into an arrangement with its clearing entity or service provider to provide the required information to FINRA on the member's behalf. If a NASDAQ member has a Designated Examining Authority ("DEA") that is other than FINRA, the NASDAQ member must report its short positions in securities listed on a registered national securities exchange other than NASDAQ to its DEA and in all NASDAQ securities directly to FINRA.

A NASDAQ member that is not also a member of FINRA must comply with this rule by reporting its short positions in NASDAQ-listed securities to its DEA, as required by the DEA's rules, through the methods specified by that DEA. The DEA will forward NASDAQ-listed equity short interest to FINRA through SIAC.

For additional information, contact Jocelyn Mello, FINRA Market Regulation at 240.386.5091.

## **NASDAQ (and FINRA) Order Audit Trail System Rules (Rule 6950)**

### **I am not a FINRA member, and am a member of another SRO. If I become a NASDAQ member, will "NASDAQ-only" firms like mine be required to comply with the Order Audit Trail System (OATS) requirements? Are there any exceptions to these requirements for NASDAQ-only firms?**

Yes. NASDAQ has adopted OATS rules that are substantially similar to FINRA's rules that apply to all NASDAQ members, whether they are a FINRA member or a member of another SRO. However, just like the FINRA OATS rules, the NASDAQ OATS Rules are not applicable to proprietary transactions originated by a trading desk in the ordinary course of a member's market making activities. In addition, NASDAQ has [adopted](#) a new exception from the OATS reporting requirements for proprietary trading firms that do not have non broker-dealer customers.

### **How does my NASDAQ-only firm qualify for the new exception from the OATS reporting requirements?**

Under the new [exception](#), qualified firms are not required to transmit OATS data to FINRA. Firms, however, must retain OATS data in a format that could easily be integrated into the FINRA OATS system, in the event that FINRA makes a request for the data. Only Proprietary Trading Firms, as defined in the new exception, qualify for the exception. A Proprietary Trading Firm is a NASDAQ member that (1) trades its own capital, with all trading being done in the firm's accounts by traders that are owners of, employees of, or contractors to, the firm; (2) does not have non broker-dealer customers; and (3) is not a FINRA member.

**UPDATED****Are firms that qualify as proprietary trading firms required to register with OATS?**

Yes. In order to facilitate requests for data as needed, FINRA requires that all firms register with OATS, establish Order Sending Organization (OSO) Relationships via the Web Interface and obtain User IDs and Passwords. Firms eligible for the exception should begin the registration process as soon as they have been approved as members. To register and gain initial access to OATS, please go to [FINRA's OATS Registration page](#) to obtain the forms that must be completed. The registration process typically takes 24 to 48 hours from the time all forms are received.

In the event FINRA requires OATS data, a formal request will be issued to the NASDAQ member. The member will then be required to contact the OATS Helpdesk at 1.800.321.6273 to schedule a time for submission of the requested data. Data must be submitted in the electronic format as prescribed in the OATS Technical Specifications.

**May a member that is eligible for the NASDAQ proprietary trading firm reporting exemption voluntarily continue to report data to OATS on a daily basis?**

Yes. Members may choose to continue daily OATS submissions to FINRA on a voluntary basis. Members should note, however, if they choose to submit data through the normal OATS production system, data will be subject to all system validations and matching requirements as prescribed in the OATS Technical Reporting Specifications.

**Are there any OATS reporting impacts on joint FINRA/NASDAQ members that route orders to NASDAQ proprietary exempt firms?**

No. Joint members should continue to report order events to OATS involving NASDAQ proprietary exempt firms as they do today. OATS will identify any routes from a joint member to a NASDAQ-only proprietary exempt firm as not eligible for matching in the inter-firm route match process.

**Do I have to be registered as a market maker to qualify for the market maker exclusion from OATS reporting requirements?**

Yes. Before your firm can utilize this exclusion, however, three things must take place: (1) NASDAQ must approve your firm as a market maker; (2) your firm must be registered as a market maker in the security or securities for which you seek the exclusion from OATS reporting; and (3) your firm must post an attributable two-sided quotation in the security or securities. For more details, please see [NASDAQ Rule 4612](#) regarding registration as a market maker and [NASDAQ Rule 4613](#) for market maker quotation obligations.

**The OATS rules apply to trading of NASDAQ-listed securities by NASDAQ or FINRA members. Do the rules still apply if I trade NASDAQ-listed securities away from the NASDAQ platform?**

Yes, the rules apply to trading in NASDAQ-listed securities, wherever the trading occurs.

**UPDATED****The OATS Rules require NASDAQ members to submit OATS reports to FINRA. My firm is not a FINRA member but does not qualify for the proprietary trading firm exception from the OATS reporting requirement. How do I comply with the requirement to submit OATS reports?**

NASDAQ is party to a Regulatory Contract under which FINRA and its subsidiaries have agreed to perform certain regulatory functions on behalf of NASDAQ, including the processing of OATS reports. Therefore, you will comply with this requirement by submitting your OATS reports to FINRA. To register and gain initial access to OATS, please go to [FINRA's OATS Registration page](#) to obtain the forms that must be completed.

**My firm is a FINRA member. How does FINRA distinguish the OATS reports of NASDAQ members from reports of FINRA members?**

There is no need to distinguish the two reports. Because the current NASDAQ OATS rule is substantially similar to the FINRA OATS rule, the SEC Rule 17d-2 Agreement between NASDAQ

and FINRA currently allocates to FINRA regulatory responsibility for OATS compliance for common members.

**Were there any OATS reporting changes for trades executed on NASDAQ/INET during Phase I of the transition, when NASDAQ-listed trades became exchange trades?**

No, there were not any OATS reporting changes for orders routed to NASDAQ and INET upon NASDAQ becoming an exchange. There are no OATS requirements for orders in non-NASDAQ-listed issues. For the latest information on OATS reporting for NASDAQ's execution system, refer to the NASDAQ [Systems Integration FAQs](#).

**How can I obtain more information about complying with the OATS Rules?**

You should review the information FINRA has on its website about [OATS compliance](#). Since the NASDAQ OATS Rule is substantially similar to the FINRA OATS Rule, FINRA's guidance is also applicable to NASDAQ members. Review FINRA's Quick Reference Guide and its [Small Firm Reference Guide](#). If you have questions, please call the OATS Helpdesk at 800.321.6273.

**Is specific information about OATS and exchange registration available?**

Yes. FINRA has posted [specific guidance](#) about OATS reporting changes related to exchange registration.

- There is a new "L" market center code for trades reported to the FINRA/NASDAQ TRF.
- Because an order routed from a NASDAQ-only member to a FINRA-only member, or vice versa, is a route to a non-member now that NASDAQ is operational as an exchange, firms must be able to properly identify NASDAQ-only and FINRA-only members for OATS reporting purposes. As announced in a [General News item](#) dated July 14, 2006, NASDAQ has added new fields to the Symbol Directory available on NASDAQTrader.com that identify NASDAQ members and FINRA members. To assist firms with making the necessary system changes to comply with this OATS requirement, NASDAQ has populated the NASDAQ membership field.

**Where can I find more information about the process for applying for the exemption from OATS reporting requirements for manual orders?**

FINRA [Notice to Members 05-78](#) provides details about this exemption.

**Payment of Fees Owed to the SEC under Exchange Act Section 31 Fees (NASDAQ Rule 7002) and Fees to Fund Payment**

**How did NASDAQ's phased approach to exchange operation affect the calculation and collection of fees related to Section 31?**

**Phase I: August 1, 2006**

**The NASDAQ Stock Market became operational as an exchange in all NASDAQ-listed securities.**

- NASDAQ became operational as a National Securities Exchange in NASDAQ-listed securities.
- All NASDAQ-listed securities trading on the exchange became Section 31 eligible. For a full list of NASDAQ-listed securities, check the NASDAQ Trader<sup>®</sup> website.

The NASDAQ Stock Market became responsible for Section 31 obligations to the SEC for all executions in NASDAQ-listed securities.

As stated in the FAQs below, NASDAQ Covered Sales were billed to customers with a Charge Date of Settlement Date. All INET Covered Sales were also billed to customers with a Charge Date of Settlement Date.



The FINRA/NASDAQ TRF became operational in this Phase for NASDAQ-listed securities. All FINRA member internalized trades in NASDAQ-listed securities reported to the FINRA/NASDAQ TRF (ACT) are FINRA's Section 31 obligation under their existing procedures.

## **Phase II: February 12, 2007**

### **The NASDAQ Stock Market became operational as an exchange in non-NASDAQ listed securities, i.e., securities listed on NYSE, Amex and regional exchanges.**

As part of Phase II, all trading of non-NASDAQ listed securities on the NASDAQ systems was consolidated on to a single book, which uses INET technology. All trades on the integrated system are now considered exchange trades.

The NASDAQ Stock Market is now responsible for Section 31 obligations to the SEC for all executions in non NASDAQ-listed securities on Single Book. This includes executions on the integrated platform resulting from other flow directed through NASDAQ or INET connectivity protocols.

The FINRA/NASDAQ TRF became operational on March 5, 2007, for non-NASDAQ-listed securities. All FINRA member internalized trades in non-NASDAQ listed securities and NASDAQ-listed securities reported to the FINRA/NASDAQ TRF (ACT technology) will be FINRA's Section 31 obligation under existing procedures.

### **How is collection of the fees that NASDAQ charges to fund payment of its Section 31 fees handled?**

NASDAQ assesses a Sales Fee to Clearing Firms relative to the Covered Sale activity of their Executing Brokers on The NASDAQ Stock Market, to fund the exchange's obligation to the SEC under Section 31 of the Exchange Act. For charges accrued for covered sales on NASDAQ (and formerly, INET), and liability incurred by NASDAQ or its broker-dealer through routing/ITS activity, charges are applied directly to Clearing Brokers' settlement accounts at the NSCC/DTCC. Trades in the FINRA/NASDAQ TRF are subject to the FINRA fee collection process.

### **How will NASDAQ recover (bill its customers) these fees for submission to the SEC? Will NASDAQ follow the same trade reporting basis followed for OTC eligible trades as FINRA?**

For NASDAQ trades, NASDAQ will not be following the same trade reporting method for the eligible trades occurring over-the-counter. NASDAQ will use the same "Settlement" Charge Date method that is utilized by the NYSE. NASDAQ will accumulate charges for all covered shares and assess them to the clearing firm for each covered sale that settles during a calendar month through a Direct Debit of firms' NSCC Settlement Account.

### **My firm is a Clearing Broker. Can I expect to receive support from NASDAQ in determining the composition of my total assessment, so that I might recover applicable charges from my Executing Brokers?**

Yes. The NASDAQ Stock Market will make detailed support files available for Clearing Brokers' secure access. These files will be available on or about the invoicing/direct debit date after the first month of exchange operation, and will include a detailed representation of each Executing Broker's activity. These files are available daily on T+3.

Please note that NASDAQ exchange support files are available on InfoCenter's secure section, while FINRA's support files will continue to be available on NASDAQTrader.com. Firms needing secure logins for either of these sites should contact [NASDAQ Subscriber Services](#) at 212.231.5180.

**My firm is an Executing Broker. Can I expect to receive charges from the NASDAQ Stock Market related to its recovery of these Fees?**

No. The NASDAQ Stock Market will apply charges to Clearing Brokers. Your Clearing Broker may seek to recover these charges from your firm.

**My firm is a Clearing Broker. Can I expect to receive charges from the NASDAQ Stock Market related to its recovery of these Fees?**

Yes. The NASDAQ Stock Market will apply charges to Clearing Brokers for charges for all covered sales for both the Clearing Broker, and any Executing Broker they represent that occur on the NASDAQ Stock Market

**Will the total charges that I incur be applied via my Clearing Broker's settlement account?**

Yes. For charges assessed against and paid by the NASDAQ Stock Market or its Broker/Dealer, by other exchanges, Associations or market centers (ECNs) on covered shares done "away" from The NASDAQ Stock Market, charges will be included in the once monthly direct debit to the Clearing Firm's settlement account. "Recovered" charges will be expressed explicitly to Clearing Firms.

**What is the calculation, composition and adjustment methodology that NASDAQ will use to assess and bill these Fees?**

1. Billing Basis = Compared (Cleared) Trades captured at the end of the day (NASDAQ Exchange Close of 8pm)
  - a. Covered Sales on the NASDAQ Stock Market
  - b. Covered Sales away from the NASDAQ Stock Market for which NASDAQ (via ITS) or its Broker Dealer (via order routing) will incur a charged related to that exchange or venues Section 31 obligation
2. The compared trade total will be adjusted by clearing reversals made post trade date (reversals reflect cancels, corrections, etc.) and prior to Settlement
  - a. Buy Reversals = Credit
  - b. Sell corrections = Bill
3. Once the adjusted compared trade total is accumulated, the calculation is based on rate x trade value (trade value being execution price multiplied by executed shares) = fee.

**FINRA RULES AND REQUIREMENTS**

**FINRA Trading Activity Fee (FINRA By-Laws, Schedule A, Section 1)**

**If I am a FINRA member and I become a NASDAQ member, will I be exempt from the FINRA Trading Activity Fee if I am a market maker?**

Yes. FINRA issued Notice to Members [06-44](#) and Notice to Members [06-71](#) providing guidance on this new exemption. NASDAQ member firms that also are FINRA members are exempt from the Trading Activity Fee for proprietary market maker transactions effected on the NASDAQ Stock Market (or any other stock exchange on which they are registered exchange market makers). The exemption includes transactions effected through both attributable and unattributable orders/quotes. Notice to Members 06-71 expanded the exemption announced in Notice to Members 06-44 and made the exemption retroactive to August 1, 2006.

**Does the FINRA Trading Activity Fee apply to me if I am not a FINRA member and become a NASDAQ member?**

No. The fee will not apply to NASDAQ members that are not FINRA members.

**Electronic Blue Sheet Submissions (FINRA Rule 8211: Automated Submission of Trading Data Requested by FINRA); FINRA Notices to Members 05-58 and 06-33 and FINRA Member Alert)**

**Electronic Blue Sheet (EBS) submissions to regulators require me to include an Exchange Code identifier indicating the marketplace of execution: R for NASDAQ; Q for FINRA ADF; and S for Over-the-Counter. What Exchange Code identifier should I use in my Blue Sheet responses for trades on NASDAQ the exchange? What identifier should I use for trades executed away from NASDAQ?**

When using the NSCC contract sheets to prepare EBS submissions, please use the following mapping to prepare your response:

XNAS – N – NQ maps to R=NASDAQ

XOTC – A – TRF maps to S=Over the Counter

XADF – T – ADF maps to Q=FINRA ADF

Also, FINRA released [Notice to Members 06-33](#) on June 30, 2006. This Notice clarifies the Exchange Code identifiers and also states that the Intermarket Surveillance Group has provided all firms with a remediation extension until December 31, 2006, not only to fix any existing problems with the Exchange Code field, but also to change their software programs to accommodate the new definition of Exchange Code values R and S. FINRA has stated in a [Member Alert](#) that the EBS reporting remediation deadline continues to be December 31, 2006. With respect to EBS submissions, FINRA stated in the [Member Alert](#) that FINRA will interpret FINRA Rule 8211 in a manner consistent with the intent of the [December 29, 2006, No-Action Letter](#) issued by the SEC Division of Market Regulation.

**FINRA INSITE Reports (FINRA Rule 3150)**

**FINRA requires Clearing Firms to report prescribed data to FINRA that is used for surveillance purposes. The data requirements are set out in the INSITE Technical Specifications, which require Clearing Firms to file data about transactions. The data must be divided into two categories: (1) Exchange Executions (transactions executed on a national securities exchange) and (2) Non-exchange executions (transactions executed in the NASDAQ, OTCBB and other OTC markets). The records I submit to FINRA now include transactions in the NASDAQ in the second category. Will I be required to change this now that NASDAQ is operational as a national securities exchange?**

FINRA has not made any changes to the INSITE Technical Specifications that were effective at the time NASDAQ became operational as an exchange. Therefore, until further notice, firms may report NASDAQ transaction data information as EITHER an exchange or a non-exchange execution. Firms will be expected to be able to identify which transactions are NASDAQ transactions upon inquiry by FINRA staff. FINRA will notify firms if there are any changes to the INSITE Technical Specifications.

Please see the INSITE [Technical Specifications and FAQs](#) for more information. For regulatory questions about INSITE, please call FINRA Member Regulation at 202.728.8221. For INSITE technical or business support, please call FINRA at 800.321.6273.

## **NYSE RULES AND REQUIREMENTS**

### **NYSE Rule 132B: NYSE Order Tracking System (OTS) and Order Tracking Requirements**

**NYSE Rule 132B is the NYSE "OATS" rule; it contains record-keeping requirements for orders in securities listed on the NYSE. Rule 132B does not apply to orders in NASDAQ-listed securities. Does my firm have any different OTS obligations now that NASDAQ is operational as an exchange?**

NYSE member firms should contact their Coordinator in the Member Firm Regulation Division of NYSE Regulation for guidance.

### **NYSE Rule 409 Confirmations**

**NYSE Rule 409(f) requires NYSE member organizations to include the name of the securities market on which the transaction was made in confirmations of transactions in NYSE-listed securities sent to customers. Prior to NASDAQ becoming operational as an exchange, we indicated "OTC" for trades executed on NASDAQ. What changes will be required now that NASDAQ is operational?**

Rule 10b-10 under the Exchange Act, which governs confirmation disclosure requirements, does not require firms to include the name of the securities market on which the transaction was made in confirmations sent to customers. However, pursuant to NYSE Rule 409(f), NYSE member organizations that effect customer transactions in NYSE-listed securities on the NASDAQ Stock Market will have to note NASDAQ as the market of execution on confirmations of those transactions. Confirmations for transactions in NYSE-listed securities that are not executed on the NASDAQ Stock Market and are reported to the FINRA/NASDAQ TRF have to note OTC as the market of execution.

NYSE Information [Memo 07-28](#) granted temporary relief from the application of Rule 409(f) until September 30, 2007. On August 2, 2007, NYSE Regulation issued Information [Memo 07-84](#), extending this relief until January 1, 2008. During the interim period, FINRA will continue to study the operational burden on member organizations and re-assess the requirements of Rule 409(f).

In the Information Memo, NYSE Regulation noted that with the adoption of Regulation NMS, an increasing number of orders routed to a given market for execution are rerouted to other markets which at the time display a better quotation. This process, required under the Reg NMS Order Protection Rule, may often lead to relatively small orders receiving executions in multiple market centers. This has created an operational challenge for NYSE member organizations to capture the name of the market of execution on a timely basis for inclusion on the transaction confirmation. As a result of these challenges, and given that Reg NMS requires NYSE member organizations to comply with their "best execution" obligations to exercise diligence to obtain the best price when routing customer trades for execution, NYSE Regulation determined that an extension of the relief is warranted.

### **NYSE Rule 410B Reports**

**NYSE Rule 410B requires NYSE member firms to report to the NYSE transactions in NYSE-listed securities effected off the exchange that are not reported to the Consolidated Tape; these reports must indicate the marketplace where the trade was executed. Prior to NASDAQ becoming operational as an exchange, we designated "OTC-USA" for trades executed on NASDAQ. What changes are required now that NASDAQ is operational?**

Please contact the NYSE for guidance.

## **NYSE Daily Program Trading Report (DPTR) (NYSE Information Memos, including 04-31)**

UPDATED

**The NYSE requires NYSE member firms to submit DPTRs containing information about program trades executed in all securities on any market. DPTRs must include an Exchange Code to indicate the exchange where the program trade was executed. The exchange codes include A for NYSE, R for NASDAQ, S for OTC, and X for ECN. Are any changes required now that NASDAQ is operational?**

The Securities Industry and Financial Markets Association (SIFMA) requested guidance from the NYSE on behalf of SIFMA member firms on the requirement to input an accurate exchange code on DPTR submissions. The NYSE granted relief from this requirement until December 31, 2006; the grant of relief, which was [extended to January 31, 2008](#), has now been [extended](#) to June 2, 2008

### **SEC RULES AND REQUIREMENTS**

#### **Exchange Act Section 16(d) Short Swing Profits**

**Now that NASDAQ is operational as an exchange, are NASDAQ market makers subject to the restrictions of Section 16?**

Section 16 of the Exchange Act requires directors, officers and principal stockholders of issuers to file statements regarding their beneficial ownership of the issuer's securities. Additionally, Section 16(b) provides that profits resulting from the purchase and sale of the securities of the issuer by a director, officer or principal stockholder made within a period of less than six months are recoverable by the issuer. Section 16(d) provides an exclusion from those restrictions for dealers engaged in certain market making activities, other than on an exchange. Trading by NASDAQ dealers previously qualified for the Section 16(d) exclusion, but now that the exchange is operational, dealers on the NASDAQ Stock Market are subject to the restrictions of Section 16. Firms may wish to contact the SEC concerning the use of information barriers within a firm to prevent a market maker from being deemed a principal stockholder under Section 16.

#### **SEC Regulation M**

**Do my obligations under Reg M change now that NASDAQ is operational as an exchange?**

No. Regulation M under the Exchange Act governs the activities of underwriters, issuers, selling security holders and others in connection with offerings of securities, and is intended to preclude manipulative conduct by persons with an interest in the outcome of an offering. Generally speaking, Regulation M imposes certain trading restrictions on parties involved in a distribution as well as "affiliated purchasers" (*e.g.*, affiliates of parties involved in the distribution). The definition of affiliated purchaser includes an exception for specialists on national securities exchanges, but does not include a similar exception for NASDAQ market makers. Rather, Rule 103 of Regulation M provides an exception from the trading restrictions for "passive market making" in NASDAQ-listed securities. NASDAQ becoming operational as an exchange should not affect the application of Regulation M to NASDAQ market makers because The NASDAQ Stock Market will not employ specialists. Please contact the SEC for further guidance.

#### **SEC Rule 10a-1 and Regulation SHO**

**Which short sale rule applies now that NASDAQ is operational as an exchange, the SEC Rule 10a-1 tick test or the Rule 3350 bid test?**

Neither. The SEC issued a [rule](#) removing price test restrictions on the execution prices of short sales and prohibiting self-regulatory organizations from having a price test. (Also see [NASDAQ RA 2007-067](#).) Both Rule 10a-1 and Rule 3350 have been deleted. The SEC also removed the requirement to mark a sell order "short exempt" if the seller is relying on an exception from a

price test. NASDAQ, however, will continue to process any orders flagged as short exempt. NASDAQ has added all NASDAQ-listed securities to the [Regulation SHO Pilot List](#) in order to assist customers with the change.

#### **Has the SEC changed the Regulation SHO locate or delivery requirements?**

No, firms still must perform locates and make delivery for short sale orders. In addition, the SEC has [eliminated](#) the “grandfather” exception to Regulation SHO’s close-out requirement in an attempt to further reduce instances of failures to deliver.

#### **SEC Rule 10b-10: Confirmations**

##### **Do my obligations under Rule 10b-10 change now that the exchange is operational?**

No. Rule 10b-10 under the Exchange Act, which governs confirmation disclosure requirements, does not require firms to include the name of the securities market on which the transaction was made in confirmations sent to customers. However, if a firm opts to provide information about the market of execution on a confirmation, it should be accurate. (But see discussion of temporary no-action relief granted under SEC Rules 17a-3 and 17a-24, below.)

#### **SEC 1% Rule (Rule 602 of Regulation NMS: the “Quote Rule”)**

**The Quote Rule requires FINRA to collect best bids and offers and quotation sizes communicated otherwise than on an exchange by each FINRA member acting as an OTC market maker who trades more than one percent of the volume in an exchange-traded security and to disseminate quotation information to vendors. To enable FINRA to comply with this requirement, the Quote Rule also requires a FINRA member who communicates bids and offers in these securities to a broker-dealer or a customer to send its best bids and offers and quotation sizes to FINRA.**

**Now that NASDAQ has begun operations as a national securities exchange, the Quote Rule requires NASDAQ to collect best bids and offers and aggregate quotation sizes communicated on the exchange by its members and to make this information available to vendors.**

##### **How will these provisions apply to broker-dealers that are members of both FINRA and NASDAQ now that NASDAQ is operational as a national securities exchange and its securities are “exchange-traded” securities?**

In order to respond to inquiries about the application of this Rule, the SEC has issued a [limited exemption](#) from Rule 602 to OTC market makers and FINRA.

- OTC market makers that communicate best bids and offers and quotation sizes to a national securities exchange that operates an “automated trading center” disseminating “automated quotations” and makes quotations available to vendors are exempted from the requirement to communicate quotation information in exchange-traded securities to FINRA.
- FINRA is exempted from its obligation to disseminate to vendors the best quotation of each member acting as an OTC market maker, as long as the exchange to which the OTC market maker communicates its best quotations disseminates to vendors all of the OTC market maker’s best bids and offers and quotations sizes (with or without attribution).

## **SEC Rule 606 (formerly SEC Rule 11Ac1-6), Disclosure of Order Routing Information**

**SEC Rule 606 requires all broker-dealers that route customer orders in equity and option securities to make publicly available quarterly reports that disclose the execution venues to which they route non-directed orders in certain covered securities. The report must be divided into four sections, depending on where the security is listed: (1) NYSE; (2) NASDAQ; (3) Amex and any other national securities exchange; and (4) option contracts. The rule also requires broker-dealers to disclose the nature of any relationship they have with those venues, including any payment for order flow arrangements. Finally, the rule requires broker-dealers to disclose, upon customer request, the venues to which individual orders were sent for execution. Are my obligations under Rule 606 affected by NASDAQ becoming operational as an exchange?** Since the integration of NASDAQ systems for trading NASDAQ-listed securities in October 2006, and for trading non-NASDAQ listed securities in February 2007, NASDAQ has become a single execution venue.

## **SEC Rules 17a-3 and 17a-25: Books and Records**

**SEC Rule 17a-3 requires broker-dealers to create certain, specified books and records. Implicit in this recordkeeping rule is the requirement that information contained in a required book or record be accurate, regardless of whether the information in the record is mandated by the Rule. SEC Rule 17a-25 requires broker-dealers submitting blue sheet information to the SEC to identify the “exchange or other market” where a transaction was executed. My firm has been working to reprogram and recode its systems as necessary to properly identify on all relevant books and records and communications with regulators: (1) NASDAQ as a national securities exchange rather than as part of the OTC market; (2) NASDAQ UTP Plan securities as exchange-listed securities; and (3) broker-dealers that are members of FINRA and NASDAQ. However, I am concerned that my firm and vendors have not had adequate time to coordinate and test these system changes and will not be able to maintain accurate books and records in violation of SEC Rules 17a-3 and 17a-25. Can my firm obtain temporary relief from the requirements of these rules?**

Yes. The Division of Market Regulation (Division) of the Securities and Exchange Commission (SEC) previously [granted](#) temporary no-action relief until December 31, 2006, from SEC Rules 17a-3 and 17a-25 in connection with NASDAQ's commencement of operation as an exchange. The Division has issued another [no-action letter](#) extending the time period for this relief and expanding the relief to include non-NASDAQ listed securities and SEC Rule 17a-5.

The time period for the relief generally has been extended until April 13, 2007. As detailed in its letter, the Division will not recommend to the SEC enforcement action during the time periods specified in the letter under SEC Rules 17a-3 and 17a-25 if a broker-dealer trades in NASDAQ-listed securities and non-NASDAQ listed securities and incorrectly identifies (1) NASDAQ as an exchange or an OTC market, (2) NASDAQ-listed securities as exchange-listed securities or OTC securities; (3) a transaction in non-NASDAQ listed securities as having occurred on an exchange market or an OTC market, and/or (4) with respect to Rule 17a-3 only, a broker-dealer as a member of NASDAQ or FINRA, whichever is the case.

In addition, the Division will not recommend to the SEC enforcement action under SEC Rule 17a-5 during this time period if a broker-dealer incorrectly classifies securities commission revenues on FOCUS Reports submitted to the broker-dealer's designated examining authority (see discussion in the next Question and Answer, below).

The no-action relief provides that broker-dealers should maintain sufficient additional records to identify, as appropriate, that a given transaction was effected on an exchange market or an OTC market, that the security is an exchange-listed security or an OTC security, and/or that the broker-dealer is either a member of FINRA or NASDAQ (whichever is the case), or may rely on NASDAQ to access and obtain this information. NASDAQ has stated in a letter to the SEC that broker-dealers may rely on NASDAQ to access and obtain this information, should it be required for the purpose of regulatory examinations in the future, until the end of the no-action relief period.

FINRA has stated in a [Member Alert](#) that it will interpret [FINRA Rule 3110](#) (Books and Records), which incorporates SEC Rule 17a-3 by reference, consistent with the temporary no-action relief granted by the Division.

### **SEC Rule 17a-5; Form X-17A-5: FOCUS Reports**

**SEC Rule 17a-5 requires broker-dealers to file with their designated examining authority (DEA) monthly or quarterly financial and operational reports. Form X-17A-5, also known as a FOCUS Report, contains a Statement of Income (Loss) section, which requires firms to disclose total securities commissions revenue broken down by type of security and execution venue. Will there be any change to the current method of reporting commission revenue now that NASDAQ is operational as an exchange?**

The Division of Market Regulation (Division) of the Securities and Exchange Commission (SEC) has [granted](#) temporary no-action relief from SEC Rule 17a-5 in connection with NASDAQ's commencement of operation as an exchange. As stated in the letter, the Division will not recommend to the SEC enforcement action under SEC Rule 17a-5 before April 13, 2007, for those securities if a broker-dealer incorrectly classifies securities commission revenues generated by transactions in NASDAQ-listed and non-NASDAQ listed securities in FOCUS Reports submitted to the broker-dealer's DEA.

### **ADDITIONAL INFORMATION**

For additional information and timely news on NASDAQ membership or NASDAQ's operation as an exchange, visit <http://www.NASDAQTrader.com/membership>.

General membership questions can be directed by phone to [NASDAQ Market Sales](#) at 800.846.0477 or by email at [NASDAQMembership@nasdaq.com](mailto:NASDAQMembership@nasdaq.com).

Questions regarding the completion, processing and status of Exchange Membership agreements and forms can be directed to Subscriber Services at 212.231.5180 or by email at [subscriber@nasdaq.com](mailto:subscriber@nasdaq.com).

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