

publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to modify the Automated Confirmation Transaction Service ("ACT") to append the .T modifier automatically to trade reports erroneously submitted to ACT without the modifier. In addition, Nasdaq is proposing to codify guidance that members must report on the following day on an "as/of" basis pre-open trades not reported before 9:30 a.m. Eastern Time. Finally, Nasdaq is making a non-substantive language change to NASD Rule 6420 to clarify that the term "executed during the trading hours of the Consolidated Tape" means between the hours of 9:30 a.m. to 4 p.m. Eastern Time. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

5430. Transaction Reporting

(a) When and How Transactions are Reported

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(4) Transaction Reporting Outside Normal Market Hours

(A)(i) Last sale reports of transactions in designated securities executed between 8 a.m. and 9:30 a.m. Eastern Time shall be reported within 90 seconds after execution and shall be designated as ".T" trades to denote their execution outside normal market hours. Additionally, last sale reports of transactions in designated securities executed between the hours of 4 p.m. and 6:30 p.m. Eastern Time shall be reported within 90 seconds after execution; trades executed and reported after 4 p.m. Eastern Time shall be designated as ".T" trades to denote their execution outside normal market hours. Transactions not reported within 90 seconds must include the time of execution on the trade report.

(ii) *Last sale reports of transactions in designated securities executed between 8 a.m. and 9:30 p.m. Eastern Time not reported to ACT prior to 9:30 a.m. shall be reported the following day on an "as/of" basis and include the time of execution. The requirements of this paragraph (ii) apply only to those trades that are required to be, or are voluntarily, reported to ACT pursuant to Rule 5430(b).*

(B) Last sale reports of transactions in designated securities executed outside the hours of 8:00 a.m. and 6:30 p.m.

Eastern Time shall be reported as follows:

(i)a. Last sale reports of transactions executed between midnight and 8 a.m. Eastern Time shall be reported between 8 a.m. and 9:30 a.m. Eastern Time on trade date, be designated as ".T" trades to denote their execution outside normal market hours, and be accompanied by the time of execution.

b. *Last sale reports of transactions executed between midnight and 8 a.m. Eastern Time not reported to ACT between 8 a.m. and 9:30 a.m. Eastern Time on trade date shall be reported to ACT the following day on an "as/of" basis and include the time of execution. The requirements of this paragraph b. apply only to those trades that are required to be, or are voluntarily, reported to ACT pursuant to Rule 5430(b).*

(ii) Last sale reports of transactions executed between 6:30 p.m. and midnight Eastern Time shall be reported on the next business day (T+1) between 8 a.m. and 6:30 p.m. Eastern Time, be designated "as/of" trades to denote their execution on a prior day, and be accompanied by the time of execution.

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(10) Nasdaq will append the .T modifier or the .SLD modifier, as appropriate, to those reports submitted to ACT that contain the time of execution, but that do not contain the appropriate modifier.

6400. Reporting Transactions In Listed Securities

6420. Transaction Reporting

(a) When and How Transactions are Reported

(1) Registered Reporting Members shall transmit through ACT, within 90 seconds after execution, last sale reports of transactions in eligible securities executed between 9:30 a.m. and 4 p.m. Eastern Time [during the trading hours of the Consolidated Tape] otherwise than on a national securities exchange. Transactions not reported within 90 seconds after execution shall be designated as late and such trade reports must include the time of execution. Registered Reporting Members shall also transmit through ACT, within 90 seconds after execution, last sale reports of transactions in eligible securities executed in the United States otherwise than on a national securities exchange between 4 p.m. and 6:30 p.m. Eastern Time; trades executed and reported after 4 p.m. Eastern Time shall be designated as ".T" trades to denote their execution outside normal market hours. Transactions not reported within 90

seconds after execution must include the time of execution on the trade report.

(2)(A) Non-Registered Reporting Members shall, within 90 seconds after execution, transmit through ACT or if ACT is unavailable due to system or transmission failure by telephone to the Nasdaq Market Operations Department, last sale reports of transactions in eligible securities executed between 9:30 a.m. and 4 p.m. Eastern Time [during the trading hours of the Consolidated Tape] otherwise than on a national securities exchange.

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6600. Over-The-Counter Equity Securities

6620. Transaction Reporting

(a) When and How Transactions are Reported

(1) through (6) No Changes.

(7) *Nasdaq will append the .T modifier or the .SLD modifier, as appropriate, to those reports submitted to ACT that contain the time of execution, but that do not contain the appropriate modifier.*

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

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq 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

NASD trade reporting rules are designed to ensure timely and accurate reports of executed trades, including trades executed before and after normal trading hours. To distinguish trades executed during the pre and after hours sessions from trades executed during normal market hours (i.e., between 9:30 a.m. and 4 p.m. Eastern Time), NASD members generally are required to append the .T modifier to reports of trades executed outside of normal market hours.⁷ Trade reports that do not

⁷ Some trades executed outside normal market hours are not reported with the .T modifier, but