

refer to the file number SR-GSCC-96-14 and should be submitted by March 18, 1997.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

Margaret H. McFarland,

*Deputy Secretary.*

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[Release No. 34-38309; File No. SR-NASD-96-54]

**Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval of a Proposed Rule Change Relating to Reconfirmation and Pricing Services**

February 19, 1997.

On December 20, 1996, the NASD Regulation, Inc. ("NASD Regulation") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-NASD-96-54) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> Notice of the proposal was published in the Federal Register on January 9, 1997.<sup>2</sup> No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

**I. Description**

Several years ago, the National Securities Clearing Corporation ("NSCC") began operating its Reconfirmation and Pricing Service ("RECAPS") that permits NSCC participants to submit their fail transactions for reconfirmation and repricing on a quarterly basis. Rule 11190 (formerly Section 69) of the Uniform Practice Code ("Code") of the National Association of Securities Dealers, Inc. ("NASD") mandates that a member which is a participant in a registered clearing agency participate in the clearing agency's fail reconfirmation and pricing service.

Even after a transaction is compared, fails can occur for many reasons (*e.g.*, because the securities fail to be received or delivered or payment is not received or delivered). RECAPS provides a means for parties with open fails on their books to send them to NSCC for matching on a quarterly basis. The RECAPS process allows members to reconfirm outstanding fails by establishing a new settlement date and to reprice such fails

by marking the contract to the current market price. It also identifies a submitting member's fails that may have been settled or for which the contraparty has no record.

Prior to this amendment, when one of the parties did not respond to a RECAPS submission, the submitting party could either leave the fail open for three more months and try again for resolution through RECAPS or could buy in or sell out the transaction pursuant to NASD's Code. The submitting member was required by Rule 11810 of NASD's Code to send another notification to the contraparty and wait another two days prior to effecting a buy in. No prior notice is or was required before effecting a sell out pursuant to Rule 11820 of NASD's Code.

As amended, Rule 11190(b)(1) permits a contract that has been submitted to a reconfirmation and repricing service and that has been DK'ed by the contraparty or is otherwise deemed a DK under the rules of the service<sup>3</sup> to be closed out by the submitting party without notice during normal trading hours promptly after the completion of the reconfirmation and pricing cycle for the account and liability of the nonconfirming member.<sup>4</sup> New paragraph (b)(2) of Rule 11190 requires that the submitting member notify the nonresponding member of any execution to close the contract on the day of execution and the action of the member to buy in or sell out in accordance with the provisions of Rules 11810 and 11820, respectively. However, if the submitting member determines not to close out a DK, the fail continues to remain open on the submitting member's books until the next RECAPS cycle.

**II. Discussion**

Section 15A(b)(6) provides that the rules of an association must be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities.<sup>5</sup> The Commission believes that the proposed rule change is consistent with the NASD's obligations under the Act. The proposals provides an expedited

<sup>3</sup> Recently, NSCC amended its Procedure II(G) to provide that failure to respond to a RECAPS reconfirmation attempt shall result in the transaction being DK'ed. Treating a failure to respond to a RECAPS reconfirmation attempt as a DK under NSCC's rules extinguishes any rights of the nonresponding member with respect to the transaction.

<sup>4</sup> The word "promptly" in paragraph (b)(1) is intended to be interpreted in accordance with the nature and liquidity of the securities.

<sup>5</sup> 15 U.S.C. 78o-3(b)(6).

mechanism to reduce long outstanding fails that have been submitted to RECAPS. When a selling member DKs a transaction or fails to respond to a RECAPS advisory, Rule 11190(b) of the Code allows the buying member to immediately execute a buy in transaction and notify the nonresponding selling member of its liability for the transaction. The proposal provides an incentive to parties to resolve RECAPS transactions submitted against them in a timely fashion. By encouraging and assisting parties to resolve their trade disputes, the proposal helps foster cooperation and coordination with persons engaged in clearing, settling, and facilitating transactions in securities.

**III. Conclusion**

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 15A of the Act and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-NASD-96-54) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

Margaret H. McFarland,

*Deputy Secretary.*

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[Release No. 34-38291; File No. SR-NASD-97-10]

**Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Distribution of Information Concerning the Availability of the NASD Regulation, Inc. Public Disclosure Program**

February 14, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 11, 1997, the National Association of Securities Dealers, Inc. ("NASD" or "Association") 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 the NASD. The Commission is publishing this notice to

<sup>6</sup> 17 CFR 200.30-3(a)(12).

<sup>8</sup> 17 CFR 200.30-3(a)(12)

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

<sup>2</sup> Securities Exchange Act Release No. 38115 (January 3, 1997), 62 FR 1351.

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

Below is the text of the proposed rule change. Proposed new language is italicized.

##### 2280. Investor Education and Protection

(a) *Each member shall, with a frequency of not less than once every calendar year, provide in writing to each customer the following items of information.*

- (1) *NASD Regulation Public Disclosure Program Hotline Number*
- (2) *NASD Regulation Web Site Address*
- (3) *A statement as to the availability to the customer of an investor brochure that includes information describing the Public Disclosure Program*

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

In its filing with the commission, the 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. The 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

During 1995, at the request of the Honorable Edward J. Markey, the General Accounting Office ("GAO") undertook a review of the effectiveness of the NASD's toll-free telephone information service used to disseminate information under the NASD Regulation Public Disclosure Program ("PDP"). In July 1996, the General Accounting Office issued a report of its review of the PDP. The report included a recommendation that NASD Regulation publicize and educate investors about the availability of information through the NASD Regulation PDP. Specifically, the report recommended that NASD Regulation:

[E]xplore other ways of publicizing the hotline to a wider audience of investors, such as including the hotline number on account-opening documents or account statements, making disciplinary-related information directly

available to investors through the Internet.

The Proposed amendment in new paragraph 2280(a) would require each member to provide to each customer, at least once annually on a written statement, the 800 telephone number for the PDP, the NASD Regulation Web Site Address, and the availability of an investor brochure that includes information describing the PDP. This proposal gives NASD members the flexibility to determine what kind of written statement is to be used. Some members may elect to include this information on customer account statements and some may elect to use another kind of publication.

The NASD believes that the proposed rule change is consistent with the provision of Sections 15A(b)(6) and 15A(i) of the Act in that the requirement that firms publish on a written statement to existing customer accounts, at least annually, the availability of information through the PDP is an important element in promoting the availability of the PDP information to investors.

##### B. Self-Regulatory Organization's Statement on Burden on Competition

The 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, as amended.

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

Written comments were neither solicited nor received.

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

At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the 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.

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning SR-NASD-97-10. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by March 18, 1997.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-38303; File No. SR-PHIL-96-18]

#### **Self-Regulatory Organizations; Philadelphia Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Establishment of Fees Charged for Direct Registration System**

February 18, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on November 6, 1996, Philadelphia Depository Trust Company ("Philadep") 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 prepared primarily by Philadep. The Commission is publishing this notice to solicit

<sup>1</sup> 15 U.S.C. 78s(b)(1) (1988).