

made without that Plan Participant's direct or indirect voting participation. If a Plan Participant is chosen to operate such exclusive SIP, the Commission believes there should be a further presumption that the Participant-operated exclusive SIP shall operate completely separate from any order matching facility operated by that Participant and that any order matching facility operated by that Participant must interact with the plan-operated SIP on the same terms and conditions as any other market center trading Nasdaq-listed securities. Further, the Commission will expect the NASD to provide direct or indirect access to the alternative SIP, whether exclusive or non-exclusive, by any of its members that qualify, and to disseminate transaction information and individually identified quotation information for these members through the SIP.

Furthermore, the revised final Plan should be open to all SROs, and the Plan should share governance of all matters subject to the Plan equitably among the SRO Participants. The Plan also should provide for sharing of market data revenues among SRO Participants. Finally, the Plan should provide a role for participation in decision making to non-SROs that have direct or indirect access to the alternative SIP provided by the NASD. The Commission expects the parties to continue to negotiate in good faith on the above matters<sup>16</sup> as well as any other issues that arise during Plan negotiations.

The Commission also finds that it is appropriate to extend the exemptive relief from Rule 11Ac1-2<sup>17</sup> under the Act until the earlier of October 19, 2001, or until such time as the calculation methodology of the BBO is based on a mutual agreement among the Participants approved by the Commission. The Commission further finds that it is appropriate to extend the exemptive relief from Rule 11Aa3-1<sup>18</sup> under the Act to the BSE through October 19, 2001. The Commission believes that the temporary extensions of the exemptive relief provided to vendors and the BSE, respectively, are consistent with the Act, the rules thereunder, and specifically with the objectives set forth in Sections 12(f)<sup>19</sup>

and 11A<sup>20</sup> of the Act and in Rules 11Aa3-1<sup>21</sup> and 11Aa3-2<sup>22</sup> thereunder.

## VII. Conclusion

*It is therefore ordered*, pursuant to Sections 12(f)<sup>23</sup> and 11A<sup>24</sup> of the Act and paragraph (c)(2) of Rule 11Aa3-2<sup>25</sup> thereunder, that the Participants' request to extend the effectiveness of the Plan, as amended, for Nasdaq/NM securities traded on an exchange on an unlisted or listed basis through October 19, 2001, and certain exemptive relief through October 19, 2001, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>26</sup>

**Jonathan G. Katz,**  
*Secretary.*

[FR Doc. 01-23457 Filed 9-17-01; 1:24 pm]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting.

**FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:** 66 FR 47930, September 14, 2001.

**STATUS:** Closed meeting.

**PLACE:** 450 Fifth Street, NW., Washington, DC.

**DATE PREVIOUSLY ANNOUNCED:** September 10, 2001.

**CHANGE IN THE MEETING:** Cancellation of Meeting.

The closed meeting scheduled for Monday, September 17, 2001 at 10:00 a.m. has been cancelled.

Dated: September 14, 2001.

**Jonathan G. Katz,**  
*Secretary.*

[FR Doc. 01-23443 Filed 9-17-01; 12:30 pm]

**BILLING CODE 8010-01-M**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44787; File No. SR-NASD-2001-53]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the National Association of Securities Dealers, Inc. Amending Rule 11870, Customer Account Transfer Contracts

September 12, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange of 1934 ("Act"),<sup>1</sup> notice is hereby given that on August 16, 2001, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly owned subsidiary, NASD Regulation, Inc. ("NASD-R") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by NASD-R. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval.

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

NASD Regulation proposes to amend NASD Uniform Practice Code Rule 11870(c) and 11870(d) in order to expedite the transfer of customer accounts that contain proprietary or third party products (e.g., mutual funds or money market funds) that the receiving member cannot receive or carry.

#### 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-R 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-R has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.<sup>2</sup>

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

<sup>2</sup> The Commission has modified the text of the summaries prepared by NASD.

<sup>16</sup> See also discussion in the SuperMontage order, *supra* note 4.

<sup>17</sup> 17 CFR 240.11Ac1-2.

<sup>18</sup> 17 CFR 240.11Aa3-1.

<sup>19</sup> 15 U.S.C. 78l(f).

<sup>20</sup> 15 U.S.C. 78k-1.

<sup>21</sup> 17 CFR 240.11Aa3-1.

<sup>22</sup> 17 CFR 240.11Aa3-2.

<sup>23</sup> 15 U.S.C. 78l(f).

<sup>24</sup> 15 U.S.C. 78k-1.

<sup>25</sup> 17 CFR 240.11Aa3-2(c)(2).

<sup>26</sup> 17 CFR 200.30-3(a)(29).

*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 conform Uniform Practice Code Rule 11870 to recent modifications to the Automated Customer Account Transfer Service ("ACATS"), which is administered by the National Securities Clearing Corporation ("NSCC"). Recent ACATS modifications offer the capability to facilitate the transfer of accounts containing third party and/or proprietary products. The proposed changes to NASD Rules 11870(c) and 11870(d) would correspond to those modifications and would give member firms the ability to expedite the transfer of such accounts. The proposed rule change also conforms the NASD Rules to a recent amendment to the Interpretation of the New York Stock Exchange ("NYSE") Rule 412.<sup>3</sup>

Under current Rules 11870(c) and 11870(d), when a customer whose securities account is carried by a member ("carrying member") wishes to transfer the entire account to another member ("receiving member") the customer submits a signed broker-to-broker transfer instruction to the receiving member. The receiving member immediately submits the instruction to the carrying member, and the carrying member has three business days either to validate and return the transfer instruction to the receiving member (with an attachment reflecting all positions and money balances as shown on its books) or to take exception to the instruction. Prior to or at the time of validation of the transfer instruction, the carrying member must request in writing instructions from the customer with respect to the disposition of any assets in the account that it identifies as nontransferable, including any asset that is a proprietary product of the carrying member. The customer may ask the carrying member to liquidate the asset, continue to retain the asset, or physically transfer the asset in the customer's name to the customer.

The account, however, also may contain assets that have not been identified by the carrying member as nontransferable because they are the product of a third party (e.g., mutual fund/money market fund) with which the receiving member does not maintain the relationship or arrangement necessary to receive/carry the assets. Notwithstanding the presence of such

assets in the account, the carrying member currently must include such assets in the transfer of the account, the carrying member currently must include such assets in the transfer of the account. If the receiving member is unable to receive/carry an asset that is a product of a third party, the receiving member must send the asset back to the carrying member.

The carrying member must complete the transfer of the account to the receiving member within three business days following the validation of a transfer instruction. The receiving member and the carrying member must immediately establish fail-to-receive and fail-to-deliver contracts at then-current market values upon their respective books against the long positions and short positions, respectfully, in the customer's account that have not been delivered or received, and the receiving member must debit and the carrying member must credit the related money amount. These fails require substantial processing time for both the carrying and receiving members and require carrying members to credit the receiving firm funds equivalent to the value of the assets they are unable to deliver. These fails can also cause customers confusion in that customers receive multiple account statements from the carrying and receiving firms as the firms transfer and then reverse transactions.

The proposed rule change would require the receiving member upon receipt of the asset validation report to designate any assets that are the product of a third party with which the receiving member does not maintain the relationship or arrangement necessary to receive/carry the asset for the customer's account. The carrying member upon receipt of such designation may treat such designated assets as nontransferable and refrain from transferring the designated assets.

The receiving member after designating those third party assets it is unable to receive/carry would have to provide the customer with a list of those assets and request instructions from the customer regarding their disposition. The customer would be given the alternatives of having to liquidate the assets, having the carrying broker-dealer continue to retain the assets, having the assets physically transferred in the customer's name to the customer, or transferring the assets to the third party that is the original source of the product for credit to an account opened by the customer with the third party.

The proposed rule change would also deem as a nontransferable asset a proprietary product of the carrying

member unless the receiving member agrees to accept transfer of the assets.

Current Rule 11870(d)(3)(C) provides that a member may take exception to a transfer instruction if the account number is invalid (account number is not on the carrying member's books). The proposed change to Rule 11870(d)(3)(C) will make clear that the carrying member is responsible for tracking account number changes; therefore, an account number that has been changed due to internal reassignment of an account to another broker or account executive with the carrying member will not be considered invalid for purposes of taking exception to a transfer instruction.

2. Statutory Basis

NASD-R believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that NASD's 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-R believes that the proposed rule change is designed to accomplish these goals by making the transfer of customer accounts faster and more efficient, reducing customer confusion, and facilitating the transfer of third-party and proprietary products. The proposed rule change will also conform NASD requirements to recent amendments to the Interpretation of NYSE Rule 412.

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

NASD-R 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.

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

The Commission finds that the proposed rule change is consistent with the requirements of Section 15A of the Act, which requires, among other things, that the rules of a national securities association be designed to remove the impediments to and perfect the mechanism of a free and open market and a national market system

<sup>3</sup> Securities Exchange Act Release No. 44596 (July 26, 2001), 66 FR 40306 (Aug. 2, 2001).

and protect investors and the public interest.<sup>4</sup> These obligations are met when procedures governing the transfer of customer accounts are made more efficient. The rule change should eliminate the present need for reversing the transfer of third party and/or proprietary products, thereby reducing delay, and also reduce the cost of customer transfers incurred by members under the current system. For example, the proposed designation and notice requirements on the part of the receiving firm should reduce the overall timeframe for transferring or disposing of third party products and should lower the related costs incurred by NASD's members. The rule change should also reduce customer confusion and facilitate decisions by customers concerning the disposition of proprietary and third party products. Finally, because the proposed rule change is designed to conform NASD Rules 11870(c) and 11870(d) with recent amendments to the Interpretation of NYSE Rule 412, the proposal should help provide uniformity.

NASD-R has requested that the Commission find good cause pursuant to Section 19(b)(2) of the Act<sup>5</sup> for approving the proposed rule change prior to the thirtieth day after publication of notice of the filing in the **Federal Register**. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication in the **Federal Register** because accelerated approval will allow the NASD to implement these changes when NSCC implements changes to ACATS. The Commission is approving the proposed rule change prior to the expiration of the comment period in order to permit the NASD to conform its rule with the NYSE and benefit customers as soon as possible.

#### 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609. 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 NASD's principal office. All submissions should refer to File No. SR-NASD-2001-53 and should be submitted by October 10, 2001.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-NASD-2001-53) be, and hereby is, approved on an accelerated basis.

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

**Margaret H McFarland,**

*Deputy Secretary.*

[FR Doc. 01-23308 Filed 9-18-01; 8:45 am]

**BILLING CODE 8010-01-M**

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44788; File No. SR-NASD-2001-56]

#### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Extend a Pilot Program That Reduced Monthly Fees for Non-Professional Users Receiving the National Quotation Data Service

September 13, 2001.

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 September 5, 2001, the National Association of Securities Dealers, Inc. ("NASD") or "Association"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to Section 19(b)(3)(A) of the Act,<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. The

<sup>6</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).

<sup>4</sup> 17 CFR 240.19b-4(f)(6). Nasdaq provided the Commission with written notice of its intent to file the proposal, along with a brief description and text of the proposed rule change on August 24, 2001.

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

Nasdaq proposes to extend a one-year pilot program under NASD Rule 7010(h) that reduced from \$50 to \$10 the monthly fee that non-professional users pay to receive the National Quotation Data Service ("NQDS").<sup>5</sup> Nasdaq proposes to extend the one-year fee reduction pilot program for non-professional users of NQDS for another year. The pilot, as extended, would continue uninterrupted through August 31, 2002. Nasdaq has designated this proposal as non-controversial, rendering it effective upon filing with the Commission. Nasdaq asks that the Commission waive the 30-day operative waiting period pursuant to SEC Rule 19b-4(f)(6)(iii).<sup>6</sup> to allow the pilot program to continue uninterrupted through August 31, 2002.

#### 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 its proposal and discussed any comments it received regarding the proposal. 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

Nasdaq is proposing to extend a one-year fee reduction pilot program that was established under NASD Rule 7010(h) on August 31, 2000, and that reduced from \$50 to \$10 the monthly fee that non-professional users pay to receive NQDS.<sup>7</sup>

NQDS delivers market maker quotations, Nasdaq Level 1 service (including calculation and display of the inside market), and last sale information that is dynamically updated on a real-time basis. NQDS data is used

<sup>5</sup> See Securities Exchange Act Release No. 43190 (August 22, 2000), 65 FR 52460 (August 29, 2000) (SR-NASD-00-47). NQDS is sometimes referred to as the "Nasdaq Quotation Dissemination Service."

<sup>6</sup> 17 CFR 240.19b-4(f)(6)(iii)

<sup>7</sup> See footnote 5 supra.

<sup>4</sup> 15 U.S.C. 78o-3.

<sup>5</sup> 15 U.S.C. 78s(b)(2).