

should serve to promote just and equitable principles of trade and protect investors and the public interest by facilitating the orderly distribution and pricing of IPO securities. Specifically, the proposed mandatory delay in third market trading of IPO securities should help to minimize any potential risk of price volatility that may be associated with multiple-market trading of listed IPO securities before the listing exchange has provided for the first trade in the security. This should benefit investors and the capital formation process by decreasing the risk of price volatility in the IPO securities.

The Commission finds good cause for approving the proposed rule change prior the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. The Commission believes that accelerated approval of the proposal is appropriate because the proposal is an important precautionary measure for the protection of investors, yet accelerated approval should have minimal impact on market participants because the third market so rarely trades IPOs before the listing exchange effects the first trade in the securities.

It is therefore ordered, pursuant to Section 19(b)(2) ⁸ that the proposed rule change is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. ⁹

Jonathan G. Katz,
Secretary.

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[Release No. 34-36638; File No. SR-NASD-95-59]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. to Amend Section 65 of the Uniform Practice Code to Require Members Who are Participants in a Registered Clearing Agency to Use the Electronic Facilities of such Agency to Transmit Customer Account Transfer Instructions

December 26, 1995.

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 December 16, 1995, 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 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

The NASD proposes to amend Section 65 of the Uniform Practice Code (UPC) ¹ to require members who are participants in a registered clearing agency to use the electronic facilities of such agency to transmit customer account transfer instructions. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

UNIFORM PRACTICE CODE

**Customer Account Transfer Contracts
Sec. 65.**

* * * * *

Participant in a Registered Clearing Agency

(m)(1) When both the carrying member and the receiving member are participants in a registered clearing agency having automated customer securities account transfer capabilities and are eligible to use such capabilities, the account transfer procedure, including the establishing and closing out of fail contracts, must be accomplished in accordance with the provisions of this rule and pursuant to the rules of and through such registered clearing agency.

(2) When both the carrying member and the receiving member are participants in a registered clearing agency having automated customer securities account transfer capabilities with an automated facility for transferring mutual fund positions such facilities must be utilized for transferring mutual fund positions.

(3) When both the carrying member and the receiving member are participants in a registered clearing agency having automated customer securities account transfer capabilities with a facility for transferring residual credit positions (both cash and securities) which have accrued to an account after the account has been transferred (residual credit processing), such facilities must be utilized for transferring residual credit positions from carrying member to receiving member.

(4) *When both the carrying member and the receiving member are participants in a registered clearing*

agency having automated customer securities account transfer capabilities with a facility permitting electronic transmittal of customer account transfer instructions, such facilities shall be used in accordance with the following:

(A) *Members using such facilities shall execute an agreement designated by the Committee specifying the rights, obligations and liabilities of all participants in or users of such facilities;*

(B) *Customer account transfer instructions shall be transmitted in accordance with the procedures prescribed by the registered clearing agency;*

(C) *The transmittal of a transfer request through such electronic facilities shall constitute a representation by the receiving member that it has received a properly executed Transfer Instruction Form (TIF) or other actual authority to receive the customer's securities and funds; and*

(D) *Transfer instructions transmitted through such facilities shall contain the information necessary for the clearing agency and the carrying member to respond to the transfer instruction as may be specified by this Section and the clearing agency.*

[(4)](5) For purposes of this rule, the term "registered clearing agency" shall be deemed to be a clearing agency as defined in the Securities Exchange Act of 1934 and registered in accordance with that Act.

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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, 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*

Background

Section 65 of the UPC requires a customer who wishes to transfer an account from one member to another to give written notice (a Transfer Instruction Form or "TIF") to the member who will be receiving the

⁸ 15 U.S.C. § 78s(b)(2) (1988).

⁹ 17 CFR 200.30-3(a)(12) (1991).

¹ NASD Manual, Uniform Practice Code, Section 65 (CCH) ¶ 3565.

account ("receiving member"). The notice is then delivered to the member carrying the account ("carrying member") and the carrying member is then obligated to validate and return the TIF, or take exception to all or part of it. The account is then transferred to the receiving member, subject to the exceptions.

Subsection 65(m) of the UPC requires members to use the automated systems of a registered clearing agency, when available, to accomplish account transfers when both the receiving member and carrying member are participants in the clearing agency. The use of such automated systems avoids the delay and risk associated with physical delivery and transfer of securities.

The National Securities Clearing Corporation's ("NSCC") Automated Customer Account Transfer Service ("ACATS") is currently the only automated transfer system and is the system through which virtually all customer accounts are transferred between members. Until recently, however, it was standard industry practice to deliver physically (or by facsimile) a customer-signed TIF to the carrying member, even though member firms use ACATS to accomplish electronic transfers of the customer accounts.

In early 1993, NSCC implemented a voluntary TIF Immobilization Program ("Program") to permit transfer instructions to be transmitted electronically through ACATS. The goal of the Program is to automate the entire customer account transfer process and immobilize the TIF at the receiving firm.² To participate in the Program current participants require new participants to execute a "Pilot Program Agreement" ("Agreement") that specifies the rights, obligations and liabilities of the participants. The Agreement was developed by the industry at the encouragement of NSCC when the Program was initiated.³ The most significant aspect of the Agreement is that it shifts liability for improper transfers to the receiving firm, provided the carrying firm transfers the account according to the instructions it receives through ACATS.⁴

²The Program has grown to 27 broker/dealers representing 85% of the accounts transferred.

³NSCC administers the Program by providing application material to prospective participants. The application material includes the Agreement.

⁴For transfers occurring outside the Program a carrying firm is liable, in general, if it improperly transfers an account, or securities in an account. Such an improper transfer could occur, for example, if the carrying firm transferred the wrong account or if an IRA account was transferred in a manner that subjected the account owner to

The NASD is aware that some investors and others believe that account transfers are unreasonably delayed for reasons that are not related to difficulties in account transfer procedures. The NASD believes that such delays are rare, but that any unreasonable delay in transferring customer accounts is unacceptable and detrimental to the interests of investors. The NASD believes that mandating participation in the Program should help reduce or eliminate the infrequent delays that some customers may be experiencing when transferring accounts and improve investor confidence in the industry's ability and willingness to comply expeditiously with customer instructions.

Proposed Amendment to Section 65 of the UPC

The proposed amendment to Section 65 of the UPC will require members to transmit account transfer instructions electronically through automated systems when both the carrying and receiving firms are participants in a registered clearing agency that has such automated facilities. The effect of this proposed rule change is to require members who are NSCC participants to participate in NSCC's TIF Immobilization Program and to use NSCC's ACATS system to transmit customer account transfer instructions.

The proposed rule change also requires members participating in the TIF Immobilization Program to execute an agreement designated by the NASD's Operations Committee specifying the rights, obligations and liabilities of all participants in or users of NSCC's ACATS system in transmitting customer account transfer instructions. The NASD intends to designate the Pilot Program Agreement currently in use among participants in order to maintain continuity of rights obligations and liabilities among current and future participants. In addition, by providing for the designation of the Agreement for purposes of the proposed rule, the NASD's Operations Committee will be able to review and approve any changes

unintended tax liability. Finally, it could occur if the receiving firm, or a former employee who had moved to the receiving firm, submitted a transfer instruction that had not been authorized by the customer. In such cases, if the carrying firm did not verify the transfer instruction with the customer, the carrying firm would be primarily liable for the improper transfer even if it could sue the receiving firm for transmitting an unauthorized or incomplete transfer instruction.

The forgoing examples are neither exhaustive of possible improper transfer scenarios, nor are they representative of any specific cases. Moreover, the NASD is not aware of any cases of improper transfers occurring because of fraudulent actions by a receiving firm or its employees.

to the agreement that may be proposed by participants or others in the future.

The proposed rule change also requires that customer account transfer instructions be transmitted in accordance with the procedures prescribed by the registered clearing agency. NSCC's rules currently prescribe procedures for transmitting customer account transfer instructions.⁵

The proposed rule change also provides that the transmittal of a transfer instruction constitutes a representation that the receiving member has received a properly executed TIF or other actual authority to receive the customer's account. Although it is similar to a provision in the Agreement, the NASD intends that this provision will perform a regulatory function in that a member transmitting account transfer instructions through ACATS without first obtaining a properly executed TIF or other actual authority from the customer may be subject to disciplinary sanctions for misrepresenting its authority to receive the customer account. Such a misrepresentation may constitute a violation of Article III, Section 1 of the Rules of Fair Practice.⁶

Finally, the proposed rule change provides that transfer instructions transmitted through an electronic facility shall contain the information necessary for the clearing agency and the carrying member to respond to the transfer instruction as may be specified by Section 65 of the UPC and the clearing agency. This provision means that members transmitting transfer instructions must comply with Section 65 and with the requirements of NSCC's rules⁷ and that generating a valid transfer instruction involves providing the information that NSCC considers necessary to accomplish the account transfer.

⁵See NSCC Rule 50.

⁶NASD Manual, Rules of Fair Practice, Art. III, Sec. 1 (CCH) ¶ 2151.

⁷NSCC's rules permit it to specify the information required for a customer account transfer instruction. Neither the NSCC's rules nor UPC Section 65 specify the information that constitutes a valid transfer instruction, however, NSCC currently uses two forms, one for cash/margin accounts and the other for tax exempt/retirement accounts. In addition, UPC Section 65 sets forth several bases for carrying members to take exception to account transfer instructions, some of which relate to incomplete or missing information about the account or securities in the account. For automated transmittals of account transfer instructions, NSCC requires the same information to be entered into ACATS by the receiving firm as is required on TIFs. In addition, NSCC reviews transfer instructions received through ACATS and may require the receiving firm to provide any other information it deems necessary to accomplish an account transfer.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act in that requiring participation in a program that permits account transfer instructions and customer accounts to be transferred entirely by electronic communications will promote the protection of investors and the public interest and enhance the clearance and settlement system by reducing the delays associated with the physical transmission of TIFs and increasing investor confidence in the responsiveness of the securities industry.

(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, Participants, or Others

Written comments were neither solicited nor received.

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

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 the foregoing. 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. 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 SR-NASD-95-59 and should be submitted by January 24, 1996.

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

Johathan G. Katz,
Secretary.

[FR Doc. 96-00039 Filed 1-2-96; 8:45 am]

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[Release No. 34-36624; File No. SR-PTC-95-08]

Self-Regulatory Organizations; Participants Trust Company; Notice of Filing of Proposed Rule Change Modifying the Opening of Processing Activity for Security Transactions on a Permanent Basis

December 21, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on December 19, 1995, the Participants Trust Company ("PTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-PTC-95-08) as described in Items I, II, and III below, which Items have been prepared primarily by PTC. 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

The proposed rule change modifies and makes permanent a ninety day pilot program that commenced on October 23, 1995, that established the opening of security processing activity at 8:30 a.m. instead of the previous time of 7:00 a.m. For purposes of participant log-ons, intraparticipant movements of securities, and the return of securities collateral to participant positions using PTC's Collateral Loan Facility ("CLF") mechanism, PTC will retain the 7:00 a.m. opening time.²

¹ 15 U.S.C. § 78s(b)(1) (1998).

² Securities Exchange Act Release No. 36405 (October 20, 1995), 60 FR 55629 [File No. SR-PTC-95-07] (notice of filing and order granting accelerated approval of proposed rule change).

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

In its filing with the Commission, PTC 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. PTC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.³

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

The purpose of the proposed rule change is to modify and make permanent the ninety day pilot program that commenced on October 23, 1995, that established the opening of security processing activity at 8:30 a.m. instead of the previous time of 7:00 a.m. The current end-of-day cut-off times will remain unchanged. Consistent with the pilot program, PTC's processing system will retain the 7:00 a.m. opening time for purposes of participant log-ons and intraparticipant movements of securities into or out of segregated accounts. In addition, the pilot program will be modified to permit the return of securities collateral to participant positions using the CLF mechanism beginning at 7:00 a.m.

The proposed rule change will conform the opening of processing activity at PTC to the opening time of the Federal Reserve System's fedwire. This will eliminate the hour and a half window during which time transactions failing PTC's credit checks cannot be processed because participants are unable to move funds to PTC ("prefunding") until the 8:30 fedwire opening. The incidence of transactions that may require prefunding in order to pass credit checks during this period is expected to increase after the implementation of PTC/SPEED processing Release 5.6, which will eliminate the posting of securities to a participant's abeyance account while awaiting match by the receiving participant. Under SPEED Release 5.6, the abeyance account will be eliminated, and transactions will be immediately posted to the deliverer's and receiver's account.⁴

³ The Commission has modified the text of the summaries prepared by PTC.

⁴ For further information on SPEED Release 5.6 and changes to PTC's processing system, refer to Securities Exchange Act Release No. 36377 (October