

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.⁸

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").¹ Notice of the proposal was published in the Federal Register on January 9, 1997.² 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 service³ 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.⁴ 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.⁵ The Commission believes that the proposed rule change is consistent with the NASD's obligations under the Act. The proposals provides an expedited

³ 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.

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

⁵ 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.⁶

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

⁶ 17 CFR 200.30-3(a)(12).

⁸ 17 CFR 200.30-3(a)(12)

¹ 15 U.S.C. 78s(b)(1).

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