

trade with each other or the introducing broker trades with one of its own Give-Up firms. In the current ACT system, the introducing broker may submit a market-maker entry for one side and either accept the trade or submit an order-entry firm entry to match the trade. In the new system, by specifying the new Give-Up Automatic Lock-In feature, the introducing broker will avoid the need to accept the trade or submit the order-entry side. In other words, this new lock-in feature will allow the introducing broker to submit just one entry and not two. ACT will submit this trade to NSCC as an M1 matched locked-in trade.

No/Was Trades

Whereas in the current ACT system a trade that is entered incorrectly or for some other reason is declined by the counterparty must be deleted and re-entered by the market-maker side, the enhanced ACT will allow the market-maker side to modify, or "No/Was," a trade that was declined by the counterparty.

".S" Trade Modifier

Currently the ".S" trade modifier cannot be used to indicate a two-day settlement period; the system only recognizes the modifier as indicating four or more days. However, in the new ACT, the allowable entries for the ".S" modifier will be either two days, or anywhere from four through 60 days.

Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act⁸ in that the proposed rule change should enhance the process through which members engage in the comparison and clearing of securities transactions. Specifically, Section 15A(b)(6) requires that the rules of a registered national securities association are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposed rule change provides material enhancements to the process of

comparing, and ultimately clearing and settling, securities transactions, and thus is wholly consistent in the furtherance of the purposes of the Act.

(B) Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq 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

The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁹ and Rule 19b-4(e)(5) thereunder.¹⁰ The proposal effects a change in an existing order-entry or trading system of a self-regulatory organization that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not have the effect of limiting the access to or availability of the system.

At any time within sixty days of the filing of the proposed rule change, the Commission may summarily abrogate such 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.

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, NW., 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 Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-98-47 and should be submitted by November 17, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40582; File No. SR-NSCC-98-4]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Granting Approval of a Proposed Rule Change Adopting an Interpretation of the Board of Directors Regarding NSCC's Obligation To Continuously Review Participants To Determine If Participants Are Required To Reapply for Membership Due to a Material Change in Conditions

October 20, 1998.

On April 24, 1998, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-NSCC-98-4) 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 June 19, 1998.² No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

New Addendum T to NSCC Rules allow NSCC: (i) to reexamine a participant who has undergone a material change in circumstances,³ (ii)

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 40086 (June 12, 1998), 63 FR 33750.

³ New Addendum T sets forth three categories where changes may warrant reconsideration: (1) material changes in ownership, control or management, (2) material changes in business lines, including but not limited to, new business lines undertaken, or (3) participation as a defendant in litigation which could reasonably have a direct

⁸ 15 U.S.C. 78o-3(b)(6).

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(e)(5).

to reconsider the participant's continuing status as a participant as if such entity was initially applying for membership when conditions originally in existence at the time a participant was accepted for membership have materially changed; and (iii) to require the participant to satisfy any concerns NSCC may have as to the participant's ongoing membership in NSCC as part of such reevaluation. In addition, new Addendum T explicitly states that participants have the affirmative obligation to advise NSCC if such material change occurs.

When a material change occurs with respect to an existing participant's ownership, control or management, mix of business, use of third party service providers, or regulatory history, among other areas, NSCC is faced with a different risk perspective than it faced at the time it approved such participant's application for membership. The NSCC board has concluded that it is in the best interests of NSCC and its membership as a whole that NSCC address these types of changes, including the ability to require the participant to reapply for membership, as if the participant was not already a participant. If NSCC did not have the ability to continually reexamine participants' status, the purpose behind scrutinizing applications and the comfort level provided by such process, would be undermined.

II. Discussion

Section 17A(b)(3)(F) of the Act⁴ requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission believes that new Addendum T to NSCC Rules will clarify NSCC's right to continuously review its participants to make sure that they have not experienced a material change in circumstances which may result in a material change in a participant's risk profile. Therefore, the Commission believes that the proposed rule change is consistent with NSCC's obligation under Section 17A(b)(3)(F) to safeguard securities and funds.

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

negative impact on the participant's business. Addendum T states that these categories are listed as examples and should not be viewed as exclusive in the process.

⁴ 15 U.S.C. 78q-1(b)(3)(F).

particular with Section 17A 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-NSCC-98-4) be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40571; File No. SR-NYSE-98-30]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Customer Account Transfer Contracts

October 19, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 28, 1998, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") 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 Exchange. 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 consists of amendments to existing Exchange Rule 412 ("Customer Account Transfer Contracts") and its stated interpretation. The text of the proposed rule change is as follows (additions are italicized; deletions are bracketed):

* * * * *

Customer Account Transfer Contracts

Rule 412. (a) no change.

(b)(1) and (b)(2) no change.

(b)(3) Within [four (4)] *three (3)*

business days following the validation of a transfer instruction, the carrying organization must complete the transfer of the customer's securities account to the receiving organization. The carrying

⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

organization and the receiving organization must establish fail to receive and fail to deliver contracts at then current market values upon their respective books of account against the long/short positions (including options) in the customer's securities account that have not been physically delivered/received and the receiving/carrying organization must debit/credit the related money account. The customer's securities account shall thereupon be deemed transferred.

NYSE Interpretation of Rule 412(b)(1)

102 Exceptions to Transfer Instruction

A carrying organization may not take exception to a transfer instruction, and therefore deny validation of the transfer instruction, because if a dispute over securities positions or the money balance in the account to be transferred. Such alleged discrepancies notwithstanding, the carrying organization must transfer the securities positions and/or money balance reflected on its books for the account.

An organization may take exception to a transfer only if:

1-9 no change.

[10. account type mismatch (receiving organization's account type does not correspond to carrying organization's);]

[11.]10. missing authorization signature (TIF requires an additional client signature or successor custodian's acceptance signature or custodial approval); or

[12.]11. client takes possession (entire account is in transfer to deliver direct to customer).

* * * * *

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 Exchange 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 Exchange 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

Rule 412 regulates the transfer of customer accounts from one member organization to another. Such transfers