uprate applications; criteria to be used by the ACRS in endorsing power uprates including PWR power uprates expected in the future; and lessons learned from the review of power uprate applications.

Saturday, January 26, 2002—8:30 a.m.—12:30 p.m.

The Subcommittee will discuss the significance determination process (SDP), including: need for an SDP based on low-power and shutdown operations PRAs or other shutdown management tools; peer review of SPAR models and SDP worksheets; and thresholds for performance indicators. Also, the Subcommittee will discuss adequacy of the process for conducting ACRS business.

The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee.

Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the Designated Federal Official named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the Designed Federal Official, Dr. John T. Larkins (telephone: 301/415–7360) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: January 8, 2002.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 02–846 Filed 1–11–02; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45239; File No. SR–NASD–95]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Adoption of Interpretive Material Regarding Interfering With the Transfer of Customer Accounts

January 4, 2002.

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 December 21, 2001, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly owned subsidiary, NASD Regulation, Inc. (''NASD Regulation''), 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 NASD Regulation. 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

NASD Regulation proposes to interpret NASD Rule 2110 to prohibit members from interfering with a customer's request to transfer his or her account in connection with the change in employment of the customer's registered representative, provided that the account is not subject to any lien for monies owed by the customer or other bona fide claim.

The text of the proposed rule change appears below. New text is in italic.

* * * * *

IM 2110–7. Interfering With the Transfer of Customer Accounts in the Context of Employment Disputes

It shall be inconsistent with just and equitable principles of trade for a member or person associated with a member to interfere with a customer's request to transfer his or her account in connection with the change in employment of the customer's registered representative, provided that the account is not subject to any lien for monies owed by the customer or other bona fide claim. Prohibited interference includes, but is not limited to, seeking a judicial order or decree that would bar or restrict the submission, delivery or acceptance of a written request from a customer to transfer his or her account. Nothing in this interpretation shall affect the operation of Rule 11870.

* * * * *

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 Regulation 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 Regulation 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

NASD Regulation represents that, as a condition of employment, certain members require their registered representatives to sign employment contracts in which each registered representative agrees that when he or she leaves the firm, he or she will not take, copy, or share with others any firm records. In addition, NASD Regulation asserts that the registered representative may agree that, for a certain period of time following his or her departure from the firm, he or she will not solicit the firm's customers for business. Nonetheless, NASD Regulation represent when a registered representative leaves his or her firm for a position at a different firm, clients serviced by the registered representative may request that the registered representative's former firm transfer their accounts to the registered representative's new firm so that the clients may continue their relationship with the registered representative. NASD Regulation asserts that the registered representative's former firm, concerned that its former employee may have breached his or her employment contract by sharing client information with the new employer, or soliciting clients to transfer their accounts to the registered representative's new firm, sometimes seeks a court order to prevent the transfer of accounts to the registered representative's new firm.[3]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] NASD Code of Arbitration Procedure Rule 10335 permits the parties to arbitration disputes to

NASD Regulation asserts that in some cases members have obtained relief in the form of court orders requiring the registered representative's new employer to reject customer account transfers received from the registered representative's former firm. NASD Regulation asserts that members also have obtained court orders requiring the registered representative's new firm to send letters to customers that may have been solicited in breach of an employment agreement stating that the firm is prohibited by a court order from having contact with that customer.

NASD Regulation believes that it is inconsistent with the high standards of commercial honor and just and equitable principles of trade mandated by NASD Rule 2110 for a member, in the context of an employment dispute with a former registered representative, to seek to override a customer's request to transfer his or her account by obtaining a court order stopping the transfer. NASD Regulation believes that customers should have the freedom to choose the registered representatives and firms that service their brokerage accounts. Moreover, NASD Regulation believes that customers whose account transfer requests have been delayed in this manner could be deprived of brokerage services and access to their accounts while their registered representative and his or her former firm attempt to resolve an employment dispute.

In NASD Notice to Members 79–7 (February 13, 1979), the NASD alerted its members that the SEC had issued a notice to broker/dealers stating that unnecessary delays in transferring customer accounts, including delays accompanied by attempts to persuade customers not to transfer their accounts, are inconsistent with just and equitable principles of trade. NASD Regulation believes that obtaining court orders to prevent customers from following a registered representative to a different firm are similar to the unfair practice of delaying transfers that the SEC warned of in its notice.

To address this practice, the NASD submits this proposed rule change to adopt Interpretive Material 2110–7, which would state that it is inconsistent with just and equitable principles of trade for a member or person associated with a member to interfere with a customer's request to transfer his or her account in connection with the change in employment of the customer's registered representative, provided that the account is not subject to any lien for monies owed by the customer or other bona fide claim. The proposed rule change would not affect the operation of Rule 11870 (governing customer account transfers). NASD Regulation represents that members would continue to have the ability to delay or take exception to account transfers in situations where, for example, the account contains nontransferable assets or the transfer request provides information that is inadequate to identify the account to be transferred.[4]

NASD Regulation represents that the proposed rule change does not affect the ability of member firms to use employment agreements to prevent former representatives from soliciting firm customers. Similarly, NASD Regulation believes that the proposal would not prevent a firm from enforcing employment agreements with former representatives. For example, NASD Regulation represents that a member could seek an injunction against a former registered representative and/or his or her new firm to prohibit solicitation of the member's customers if the registered representative had signed an employment contract agreeing not to solicit those customers. Rather, NASD Regulation represents that the proposed rule change is limited to restricting a member from interfering with a customer's right to transfer his or her account in the context of an employment dispute, once the customer has requested the transfer.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[5] which requires, among other things, that the Association's rules must 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 Regulation believes that member firms that seek to override a customer's request to transfer his or her account to a new firm in the context of an employment dispute with a former registered representative violate NASD Rule 2110. NASD Regulation believes that this proposed rule change is necessary to protect investors and the public interest with respect to transfers of customers accounts.

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

NASD Regulation 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

On May 22, 2001, NASD Regulation published Notice to Members 01–36 (''NTM 01–36'') seeking comment on a proposed interpretive material to NASD Rule 2110 that would state:

It shall be inconsistent with just and equitable principles of trade for a member or person associated with a member to take any action that, directly or indirectly, interferes with a customer's ability to transfer his or her account, including seeking a judicial order or decree that would bar or restrict the submission, delivery or acceptance of a written request from a customer to transfer his or her account. Nothing in this interpretation shall affect the operation of Rule 11870.

The comment period expired on July 5, 2001. Eighty-five comments were received in response to the notice. Of the 85 comments received, 67 agreed that customers should have the ability to move their accounts to new firms without interference from the member firm holding the account. These commenters expressed the view that a firm should not be able to override a customer's decision to move his or her account to a new firm.

Other commenters, while generally supportive of a customer's right to transfer an account to his or her brokerage firm of choice, raised concerns that the language of the proposed interpretative material could impede a member's ability to collect debts and enforce liens against a customer's account. These commenters suggested that the proposed interpretative material should not prevent a member from interfering with a customer's ability to transfer his or her account to avoid paying debts accrued in the account or to evade a lien on assets held in the account. Because

seek temporary injunctive relief. Proposed amendments to Rule 10335 are currently pending before the SEC. NASD Regulation represents that the (instant) proposed rule change would not conflict with or affect the operation of Rule 10335 (i.e., the procedure by which temporary injunctive relief may be obtained in intra-industry arbitration disputes), but rather would address the substantive problem of customer harm resulting from firms obtaining temporary injunctive relief that prevents customers from transferring their accounts.

[4] The SEC recently approved amendments to NASD Rule 11870 that facilitate the transfer of customer accounts containing third party proprietary products by allowing a firm receiving a customer account from another firm to assess whether the account contains assets that the receiving firm is unable to support, and to inform the customer of his or her available options concerning those assets. *See* Exchange Act Release No. 44787 (September 12, 2001), 66 FR 48301 (September 19, 2001).

[5] 15 U.S.C. 78o–3(b)(6).

NASD Regulation did not intend to interpret rule 2110 in a manner that would affect the ability of members to collect debts or enforce liens against customers, the language contained in NTM 01–36 has been modified for this proposed rule change to clarify the inapplicability of the proposed rule change in these contexts.

Numerous commenters described other situations in which they thought a member should be able to take action to stop a customer from transferring his or her account. NASD Regulation represents that existing NASD rules address many of these situations. In certain other situations described by commenters, NASD Regulation believes that the right of a customer to transfer his or her account, once the customer has requested the transfer, should take precedence. For example, some commenters believed that a member should be able to interfere with a customer's ability to transfer his or her account to follow the member's registered representative to a new firm if the registered representative did not disclose to customers the consequences of the transfer (e.g., transfer fees and manner of disposition of any non-transferable assets).

While this scenario raises concerns, NASD Regulation believes that the current regulatory scheme addresses these concerns. NASD Regulation represents that firms are required to deliver to customers information regarding the applicable fees for opening, maintaining and closing an account. In addition, NASD Rule 11870 requires that customers requesting transfer of an account be notified of non-transferable assets in an account. NASD Regulation notes that anti-fraud provisions, as well as NASD Rule 2110, are available to address false or misleading statements a registered representative may have made to a customer to induce the customer to transfer his or her account.

Some commenters suggested that a member should be able to interfere with the customer's ability to transfer his or her account to follow one of the member's registered representatives to a new firm if the customer was the client of one of the member's other registered representatives, or if the customer opened the account to form a relationship with the member, and not with a particular registered representative. NASD Regulation believes that the customer's decision should be controlling, even under these circumstances.

Sixteen commenters objected to the adoption of an interpretative material that would prohibit members from interfering with a customer's request to transfer his or her account to a new firm when the customer sought to follow a registered representative to a new firm. Among the objections raised were concerns that such an interpretation would encourage registered representatives to breach employment contracts. NASD Regulation, however, represents that nothing in NTM 01–36 or this proposed rule change gives registered representatives the right to breach employment contracts or disclose personal nonpublic information in violation of law. Further, NASD Regulation notes that member firms may seek redress against a registered representative who acts in this manner by, for example, seeking from the registered representative monetary damages or an injunction from further misconduct.

Other commenters asserted that the proposal was inconsistent with the Gramm-Leach-Bliley Act of 1999 (''GLBA''), which requires companies to safeguard the confidentiality of customer information, because a company pursuing legal action against a registered representative pursuant to the member's obligations to protect customer information under GLBA could be in violation of the interpretation. NASD Regulation, however, believes that the proposed rule change does not prohibit a member from taking action against a registered representative as necessary to safeguard confidential customer information. NASD Regulation believes that the proposed rule change prevents a member from taking action to restrict a customer's ability to transfer his or her account to a new firm once the customer has requested the transfer. NASD Regulation believes that, to the extent that any improper sharing of confidential customer information occurred before the customer's decision to transfer, the firm could seek legal redress without interfering with the customer's decision to move his or her account.

Commenters objecting to the proposal also expressed concern that the interpretation deprived members of access to legal remedies available to resolve employment disputes. NASD Regulation represents that the proposed rule change does not deny to members remedies that assist in resolving employment disputes between members and their former registered representatives; the proposed rule change articulates the view of the Association that it is inconsistent with just and equitable principles of trade for a member to harm customers as a means of resolving employment disputes.

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

Because the proposed rule change is a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule, it has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act [6] and paragraph (f)(1) of Rule 19b–4 thereunder.[7] At any time within 60 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.[8]

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 20549–0609. 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 filings will also be available for inspection and copying at the principal office of the NASD.

All submissions should refer to File No. SR–NASD–2001–95 and should be submitted by February 4, 2002.

For the Commission, by the Division of Market regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–883 Filed 1–11–02; 8:45 am]

BILLING CODE 8010–01–M

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(1).

[8] *See* Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

[9] 17 CFR 200.30–3(a)(12).