

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50018; File No. SR-NASD-2004-058)

July 14, 2004

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Partial Customer Account Transfers

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ notice is hereby given that on April 1, 2004, the National Association of Securities Dealers, Inc. (“NASD”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by the NASD. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The NASD is amending Rule 11870 to make the procedures for non-standard transfers of customer account assets through the Automated Customer Account Transfer Service (“ACATS”) consistent with the procedures for transferring security account assets in their entirety.

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 NYSE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.²

¹ 15 U.S.C. 78s(b)(1).

² The Commission has modified the text of the summaries prepared by the NASD.

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

The purpose of the proposed rule change is to amend NASD Rule 11870 so that the procedures for making non-standard transfers of customer assets³ through ACATS consistent with the procedures for standard transfers of customer assets through ACATS.⁴ The proposed rule change also permits a customer to authorize the delivering member to transfer specifically designated account assets outside of ACATS. In addition, the proposed rule change permits a customer to authorize an account transfer, in whole or in part, using an electronic signature in a format recognized as valid under federal law to conduct interstate commerce. This modification contemplates legal alternatives to written notice, as currently required, on the condition that such methods otherwise comply with the requirements of Rule 11870. The proposed rule change conforms to recently adopted amendments to the New York Stock Exchange's ("NYSE") Rule 412 and the Interpretations of Rule 412.⁵

Rule 11870(a) sets forth the procedures for members to use when transferring customer assets. The rule currently states that broker-dealers must utilize ACATS for non-standard as well as standard transfers; however, the current rule generally refers to the transfer of an entire securities account. As amended by this proposed rule change, Rule 11870 will generally apply

³ Non-standard transfers of customer assets include such things as partial transfers of account assets, fail reversals, reclaims, and mutual fund clean-ups.

⁴ Standard transfers of customer assets is generally a transfer of all assets in a customer's account where none of the securities in the account are "nontransferable assets" as that term is defined in NASD Rule 11870.

⁵ Exchange Act Release No. 49415 (March 12, 2004), 69 FR 13608 (March 23, 2004) [File No. SR-NYSE-2003-29].

the same procedures to both standard and non-standard transfers of customer account assets through ACATS.

Because customer and broker-dealer obligations resulting from the transfer of an entire account differ from the obligations arising from the transfer of specified assets within an account that will remain active at the delivering firm after the transfer, the proposed amendments to Rule 11870 will distinguish between the transfer of security account assets “in whole” (i.e., entire accounts) and the transfer of security account assets “in specifically designated part” (i.e., partial transfers). This distinction is necessary given the different obligations that arise depending on if a broker-dealer is transferring an entire account to a receiving firm or is only transferring specified assets to a receiving firm. For example, it would not be necessary for a customer to instruct the delivering firm as to the disposition of his or her assets that are non-transferable if the customer is not transferring the account in whole.

The proposed rule change also permits customers to authorize alternative instructions for the transfer of “specifically designated assets” from one broker-dealer to another. This proposed rule change therefore creates an exception to a member’s obligation to transfer specifically designated assets (i.e., partial transfers) through ACATS. The ability to authorize alternative instructions refers to partial transfers only and does not provide an exception to the members’ obligation to otherwise accomplish transfers in accordance with the rules of the National Securities Clearing Corporation (“NSCC”).

Further, Rule 11870 currently states that a customer who wishes to transfer securities account assets to another member must give “written notice of that fact to the receiving member” and must “sign” a broker-to-broker transfer instruction form. The proposed rule change to Rule 11870 will provide that the customer may authorize an account transfer, in whole or in part,

using either the customer's actual signature or an electronic signature "in a format recognized as valid under federal law to conduct interstate commerce."

Currently Rule 11870 requires that members use the transfer instructions and provide the reports prescribed by the NASD when accomplishing account transfers pursuant to the rule. The NASD is deleting this requirement in the proposed rule because it believes this provision is no longer necessary.

In order to allow members sufficient time to develop and implement necessary system changes to comply with amended Rule 11870, the NASD proposes to set an implementation date of September 13, 2004. The NASD will announce the implementation date in a Notice to Members to be published no later than thirty days following the Commission's notice of the proposed rule change.⁶

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁷ which requires, among other things, that NASD 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. The NASD believes that the proposed rule change is designed to accomplish these objectives by making the procedures for transferring designated parts of a customer account through ACATS consistent with the procedures for transferring the entire account, permitting customers to authorize a

⁶ In its filing to the Commission, the NASD indicated an implementation date of September 30, 2004. However, in order to conform to the NYSE's implementation date of September 12, 2004, the NASD requested to change their implementation date to September 13, 2004. Telephone conversation between Shirley H. Weiss, Office of General Counsel, NASD, and Susan Petersen, Division of Market Regulation, Commission, (June 25, 2004).

⁷ 15 U.S.C. 78o-3(b)(6).

partial transfer of assets outside of ACATS, and permitting customers to authorize an account transfer, in whole or in part, using electronic signature in a format recognized as valid under federal law to conduct interstate commerce. The proposed amendments to Rule 11870 are designed to expedite the transfer of customer assets between broker-dealers and more easily allow investors to transfer their assets to the broker-dealer of their choice. The proposed rule change would also conform NASD requirements to those recently adopted by the NYSE's Rule 412 and their interpretation under Rule 412.

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

The NASD does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments relating to the proposed rule change have been solicited or received. The NASD will notify the Commission of any written comments it receives.

III. 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. Comments may also be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR-NASD-2004-058. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both

methods. 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-2004-058 and should be submitted by [insert date 21 days from the date of publication in the Federal Register].

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.⁸ In particular, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of Section 15A(b)(6) of the Act,⁹ which requires that the rules of the NASD be designed to remove impediments to and protect the mechanism of a free an open market and a national market system, and in general, to protect investors and the public interest. The Commission finds the approval of the NASD's rule change is consistent with this section because the amendments are designed to make the transfer of customer securities account assets easier, more efficient, and faster process for investors to move their

⁸ 15 U.S.C. 78o-3(b). In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78o-3(b)(6).

securities to their broker-dealer of choice. The proposed rule change also makes the NASD and NYSE Rule 412 governing the transfer of customer accounts between broker-dealers consistent, which should eliminate confusion and differing treatment of customer account transfers.

The NASD has requested that the Commission approve the proposed rule change prior to thirtieth day after publication of the notice of the filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice because the rule is substantially the same as the NYSE rule, which was recently approved by the Commission,¹⁰ and because by so approving the NASD can implement its revised rule concurrently with the NYSE's implementation of its rule.

¹⁰ Supra note 5. The Commission received no comment letters opposing the NYSE rule.

V. IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-NASD-2004-058) be, and hereby is, approved on an accelerated basis.

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

Margaret H. McFarland
Deputy Secretary

¹¹ 17 CFR 200.30-3(a)(12).