

adjustment would include, among other things, stock dividends or distributions, stock splits, rights offerings mergers, and reorganizations. The proposed OLPP would permit the Sponsors to make these adjustments, as well as determine operational issues in connection with such adjustments.

E. New Plan Sponsors

The proposed OLPP contains a self-effecting provision for the addition of new sponsors, in which an "Eligible Exchange" would be able to become a sponsor of the Plan by: (i) Executing a copy of the Plan; (ii) providing each then-current Plan Sponsor with a copy of such executed Plan; and (iii) effecting an amendment to the Plan reflecting the addition of the new sponsor's name.¹⁴ An Eligible Exchange would be defined as a national securities exchange registered with the Commission in accordance with section 6(a) of the Act¹⁵ that: (i) has effective rules for the trading of option contracts issued and cleared by OCC approved in accordance with the provisions of the Act and the rules and regulations thereunder; and (ii) is a party to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information.¹⁶

F. Loss of Eligibility

An exchange would no longer be an Eligible Exchange when it ceased trading OCC issued and cleared option contracts, or, if it had become a Plan Sponsor and it had not commenced, within one year of becoming a Plan Sponsor, to list and trade OCC issued and cleared option contracts.

IV. Discussion

In section 11A of the Act,¹⁷ Congress directed the Commission to facilitate the development of a national market system consistent with the objectives of the Act. Section 11A(a)(3)(B) of the Act¹⁸ authorizes the Commission "by rule or order, to authorize or require self-regulatory organizations to act jointly with respect to matters as to which they share authority under this title in planning, developing, operating,

or regulating a national market system (or a subsystem thereof) or one or more facilities thereof." Rule 11Aa3-2 under the Act¹⁹ establishes the procedures for filing, amending, and approving national market system plans. Pursuant to paragraph (c)(2) of Rule 11Aa3-2, the Commission must approve a national market system plan if it finds that the proposed plan "is necessary or appropriate in the public interest, for the protection of investors and the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or otherwise in furtherance of the purposes of the Act."²⁰

After careful review, the Commission has determined to approve, pursuant to section 11A(a)(3)(B) of the Act and Rule 11Aa3-2 thereunder, the proposed OLPP. The Commission finds that approval of the Plan is consistent with the Act, the rules thereunder, and specifically, with the objectives set forth in section 11A of the Act and in Rule 11Aa3-2 thereunder. The Commission believes that, by ensuring uniform procedures for the listing of standardized options, the proposed OLPP will help to maintain fair and orderly markets and remove impediments to, and perfect the mechanisms of, a national market system. Specifically, the Commission believes that by providing uniform procedures for selecting option classes and series, as well as adjusting options to reflect particular events affecting the underlying security, the proposed OLPP will ensure the continued fungibility of option contracts and permit effective multiple trading of options. The Commission also believes that the proposed OLPP will minimize potential confusion among member firms and investors by ensuring uniformity with respect to symbology, trading codes, and contract terms.

In addition, the Commission believes that the proposed procedures for petitioning the OCC to review the eligibility of a new option class will minimize the potential for trading options on ineligible securities, without preventing or delaying an exchange from commencing to list or trade any option, as required by the Settlement Order. The Commission notes that these proposed procedures would not prohibit a Sponsor from submitting a certificate to list an option class, while at the same time petitioning for review of another Sponsor's listing of the same class. The Commission, however, notes that, as self-regulatory organizations, each

exchange has an obligation to enforce its own rules, including its listing standards.

The Commission believes that the proposed provisions governing the admission of new sponsors to the OLPP and the circumstances under which a Sponsor would no longer be eligible to participate in the OLPP are consistent with the Act. The proposed procedures would permit new eligible exchanges to become sponsors of the Plan without the approval of current Sponsors, which should promote the multiple trading of options without permitting anticompetitive actions on the part of existing Sponsors to prevent or delay the plans of the new entrant into the market. In addition, the proposed procedures reasonably address the need to limit the eligibility to participate in the Plan of Sponsors that no longer trade, or never commenced trading, OCC issued and cleared options.

Finally, the Commission finds that the proposed OLPP would comply with the respondent exchanges' obligations under the Settlement Order. The proposed OLPP contains no requirement of advance notice of the intention to list a new option or provisions that would allow one exchange to prevent or delay another exchange from commencing to list or trade any option class other than the one-day advance notice requirement to the OCC needed for operational purposes.

V. Conclusion

It is therefore ordered, pursuant to section 11A of the Act,²¹ and Rule 11Aa3-2 thereunder,²² that the proposed OLPP, as amended, is approved.

By the Commission.

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 01-17519 Filed 7-12-01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting; Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of July 16, 2001.

An open meeting will be held on Wednesday, July 18, 2001, in Room 1C30, the William O. Douglas Room, at

¹⁴ An amendment to the Plan may be effected by a new Eligible Exchange executing a copy of the Plan, as then in effect (with the only change being the addition of the new Plan Sponsor's name in Section 9 of the Plan) and submitting such executing Plan to the Commission. Such amendment will be effective when it has been approved by the Commission or otherwise becomes effective pursuant to Section 11A of the Act and Rule 11Aa3-2 thereunder.

¹⁵ 15 U.S.C. 78f(a).

¹⁶ See Securities Exchange Act Release No. 17638 (March 18, 1981), 22 S.E.C. Docket 484 (March 31, 1981.).

¹⁷ 15 U.S.C. 78k-1.

¹⁸ 15 U.S.C. 78k-1(a)(3)(B).

¹⁹ 17 CFR 240.11Aa3-2.

²⁰ 17 CFR 240.11Aa3-2(c)(2).

²¹ 15 U.S.C. 78k-1(a)(3)(B).

²² 17 CFR 240.11Aa3-2.

10:00 a.m., and closed meetings will be held on Wednesday, July 18, 2001, at 3:00 p.m., and Thursday, July 19, 2001, at 11:00 a.m.

The subject matters of the open meeting on Wednesday, July 18, 2001, will be:

(1) The Commission will hear oral argument on an appeal by the Division of Enforcement from an administrative law judge's initial decision.

The law judge dismissed proceedings against Quest Capital Strategies, Inc., a registered broker-dealer and investment adviser, and David Chen Yu, Quest's president and sole owner. Quest and Yu were charged with failing to exercise reasonable supervision over John Nakoski, a Quest branch manager, from August 1992 through August 1993. The law judge concluded that Nakoski engaged in a complex fraudulent scheme that, through no fault of Quest and Yu, circumvented their reasonable supervisory controls.

Among the issues likely to be argued are the following:

For further information, contact Roy Sheetz at (202) 942-0950.

(a) whether the response of Quest and Yu to the notice they received of Nakoski's activities was adequate;

(b) whether the Division of Enforcement obstructed the supervisory efforts of Quest and Yu; and

(c) what sanctions, if any, are appropriate.

For further information contact William Stern at (202) 942-0949.

(2) The Commission will also hear oral argument on an appeal by Stonegate Securities, Inc. ("Stonegate") and J.W. Barclay & Co., Inc. ("Barclay"), a registered broker-dealer.

The law judge found that Stonegate and Barclay willfully violated the reporting provisions of federal securities laws by failing to file Part II of Commission Form BD-Y2K until over a month after it was due. The law judge censured Stonegate and Barclay, and ordered them to pay \$50,000 each in civil money penalties.

Among the issues likely to be argued is whether the sanctions assessed by the law judge are in the public interest.

For further information, contact Roy Sheetz at (202) 942-0950.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(A), 9(B), and

(10) and 17 CFR 200.402(a)(5), (7), (9)(i), 9(ii) and (10), permit consideration of the scheduled matters at the closed meetings.

The subject matter of the closed meeting scheduled for Wednesday, July 18, 2001, will be: Post argument discussion.

The subject matter of the closed meeting scheduled for Thursday, July 19, 2001, will be: Institution and settlement of injunctive actions; and institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942-7070.

Dated: July 11, 2001.

Jonathan G. Katz,
Secretary.

[FR Doc. 01-17764 Filed 7-11-01; 3:50 pm]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44512; File No. SR-NASD-00-39]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to Proposed Rule Change and Amendment Nos. 1 and 2, and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 3 to Proposed Rule Change Amending Schedule A of the NASD By- Laws for the Timely Filing of Reports, and Amendments to IM-9216, Minor Rule Violation Plan

July 3, 2001.

On June 20, 2000, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, NASD Regulation, Inc. ("NASD Regulation"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and rule 19b-4 thereunder,² filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change to amend Schedule A of the NASD By-Laws for the timely filing of reports, and amendments to IM-9216, the Minor Rule Violation Plan ("MRVP"). NASD Regulation amended the proposal on

September 5, 2000.³ NASD Regulation again amended the proposal on September 21, 2000.⁴ The proposed rule change, including Amendment Nos. 1 and 2, was published for notice and comment in the **Federal Register** on September 29, 2000.⁵ No comments were received on the proposal. On June 28, 2001, NASD Regulation amended the proposal.⁶ This order approves the proposed rule change. Also, Amendment No. 3 is approved on an accelerated basis.

The Commission has reviewed carefully the proposed rule change, and Amendment Nos. 1, 2 and 3, and finds the proposed rule change is consistent with the Act and the rules and regulations promulgated thereunder.⁷ Specifically, the Commission finds that approval of the proposed rule change is consistent with section 15A(b)(6) of the

³ See September 1, 2000 letter from Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation to Joseph P. Morra, Special Counsel, Division of Market Regulation ("Division"), SEC ("Amendment No. 1"). In Amendment No. 1, NASD Regulation made technical, non-substantive changes to the original proposal. In addition, NASD Regulation provided clarifying language to assist in describing the requirements under Rule 1120.

⁴ See September 19, 2000 letter from Gregory J. Dean, Jr., Assistant General Counsel, NASD Regulation to Joseph P. Morra, Special Counsel, Division, SEC ("Amendment No. 2"). In Amendment No. 2, NASD Regulation corrected the reference to SEC Rule 19d-1(c)(2) in the title to IM-9216.

⁵ Securities Exchange Act Release No. 43330 (September 22, 2000), 65 FR 58585.

⁶ See June 28, 2001 letter from Patrice M. Cliniecki, Vice President and Deputy General Counsel, NASD Regulation to Katherine A. England, Assistant Director, Division, SEC ("Amendment No. 3, NASD Regulation made the following changes to the proposal regarding the MRVP: (1) Member firm violations of the Regulatory Element of NASD Rule 1120, Continuing Education, will not be eligible for consideration under the MRVP; (2) untimely notifications filed pursuant to NASD Rule 4619(d) may be appropriate for disposition as a minor violation, where, for example, a member inadvertently misses the filing deadline but files the notification the following day before the commencement of trading and no customer harm has occurred; intentionally late filings are inappropriate for disposition as a minor violation of the rule; (3) synchronization of business clocks pursuant to NASD Rule 6953 is deleted from the proposal; (4) Securities Exchange Act Rule 17a-11, Notification Provisions for Brokers and Dealers, is deleted from the proposal; (5) payment of annual fees pursuant to MSRB Rule A-14 is clarified to reflect that, in the event NASD Regulation staff were to issue a minor violation to a firm for failure to pay the annual fee in a timely manner, the firm would remain obligated to pay the annual fee to the MSRB; firms would not be permitted to pay the minor violation fine in lieu of paying the annual fee to the MSRB; and (6) changes in language to the "Purpose" section of the proposal as originally filed (the new language is delineated in Amendment No. 3).

⁷ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.