

that this department, rather than Nasdaq MarketWatch, is the most appropriate department to handle excused withdrawal requests based on a market maker's systemic equipment problems. As such, the organizational realignment and the corresponding proposed rule change are consistent with the requirements of the Act.

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

Nasdaq does not believe that the proposed rule change will impose 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*

No written comments were solicited or received with respect to the proposed rule change.

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

The foregoing proposal has become effective pursuant to section 19(b)(3)(A)(iii) of the Act<sup>8</sup> and Rule 19b-4(f)(3)<sup>9</sup> thereunder as one concerned solely with the administration of the self-regulatory organization. At any time within 60 days of the filing of such 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.<sup>10</sup>

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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](mailto:rule-comments@sec.gov). All comment letters should refer to File No. SR-NASD-2004-032. The file number should be included on the subject line

if e-mail is used. To help the Commission process and review 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, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change, as amended, 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 filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the File No. SR-NASD-2004-032 and should be submitted by April 13, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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### **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-49415; File No. SR-NYSE-2003-29]**

#### **Self-Regulatory Organizations; New York Stock Exchange; Order Granting Approval of a Proposed Rule Change Relating Partial Transfers and Other Non-Standard Customer Account Transfers**

March 12, 2004.

On October 1, 2003, the New York Stock Exchange ("NYSE") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-NYSE-2003-29 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> Notice of the proposal was published in the **Federal Register** on December 29, 2003.<sup>2</sup> Three comment letters in support of the proposed rule change were received.<sup>3</sup> For the reasons

discussed below, the Commission is granting approval of the proposed rule change.

#### **I. Description**

Rule 412 of the NYSE's Rules ("Customer Account Transfer Contracts") prescribes procedures for member organizations to transfer customer accounts. It requires use of the Automated Customer Account Transfer Service ("ACATS"), an electronic system administered by the National Securities Clearing Corporation ("NSCC") to facilitate the transfer of customer account assets from one broker-dealer or bank to another broker-dealer or bank, where both the carrying and receiving broker-dealers are members of NSCC. Since ACATS inception in 1985, numerous enhancements to it and to Rule 412 have allowed for faster and more efficient transfers of customer accounts. For example, the most recent amendments to the Interpretation of Rule 412 provided for the expedited transfer of accounts containing third party or proprietary products (e.g., mutual funds).<sup>4</sup>

#### *A. Non-Standard Account Transfers*

Prior to this rule change, Rule 412 and its Interpretation applied only to "standard" transfers (e.g., where customer account assets in their entirety are transferred from one member organization to another) processed through ACATS. Rule 412 and its Interpretation, as currently applied to standard transactions, include specified response times which a delivering firm and a receiving firm are to verify assets, resolve discrepancies, and complete the transfer. Standard transfers processed through ACATS are also subject to the automated processing of transfer-related fails (e.g., monies posted by a delivering firm where the security to be transferred is not transferred), reclaims (e.g., claims by delivering firm for the return of securities transferred), and of residual credits (e.g., transfer of dividends, etc. received after an account has been transferred).

While ACATS could also be used to process non-standard transfers, such as "partial" transfers (i.e., the transfer of only specifically designated assets from a customer account), Rule 412 did not require the use of the automated processing capabilities of ACATS or that non-standard transfers be accomplished in accordance with Rule 412 timeframes.

<sup>4</sup> Securities Exchange Act Release No. 44596 (July 26, 2001), 66 FR 40306 (August 2, 2001) (SR-NYSE-00-61); NYSE Information Memorandum No. 01-23 (August 16, 2001).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

<sup>15</sup> U.S.C. 78s(b)(1).

<sup>2</sup> Securities Exchange Act Release No. 48958, (December 18, 2003), 68 FR 75008 (December 29, 2003) (File No. SR-2003-29).

<sup>3</sup> Letters from Steven P. Callan, Associate Director, Bear, Stearns Securities Corp., (January 12, 2004); John Cusumano, President, and Kristie Thompson, Vice President, Customer Account Transfer Division, Securities Industry Association (January 20, 2004); Kristie Thompson, Department Leader, Customer Account Transfer, Edward Jones (January 20, 2004).

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>9</sup> 17 CFR 240.19b-4(f)(3).

<sup>10</sup> For purposes of calculating the 60-day abrogation period, the Commission considers the abrogation period to have begun on March 15, 2004, the date Nasdaq submitted Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

As amended, Rule 412 and its Interpretation will generally apply the same procedural standards to both standard and non-standard transfers (e.g., partial transfers, fail reversals, reclaims, and mutual fund fail clean ups) processed through ACATS. The amendments will mandate use of ACATS for non-standard transfers unless otherwise specifically requested by a customer.<sup>5</sup> For example, customers will not be precluded from using authorized alternate instructions to effect partial transfers.

However, certain aspects of Rule 412 and its Interpretation will continue to be applicable to standard transfers only. The amendments to Rule 412 distinguish between the transfer of security account assets "in whole" (i.e., standard transfers) and security account assets "in specifically designated part" (i.e., partial transfers). This distinction is necessary given differing customer and broker-dealer obligations that result from transferring an entire account from a delivering firm as opposed to obligations related to the transfer of specified assets from an account that will remain active at the delivering firm.

For example, should a customer request the transfer of an entire account, she must authorize the liquidation of any nontransferable proprietary money market fund assets in the account and the transfer of any resulting credit balance to the receiving organization.<sup>6</sup> In addition, any residual credit balance resulting from dividend payments subsequent to the transfer must be forwarded to the receiving organization.<sup>7</sup> Clearly, these are obligations that would attach only in instances of account asset transfers in whole, and not in instances of specifically designated asset transfers.

Another procedural distinction between the transfer of an entire account and the transfer of specifically designated asset transfers can be found in the treatment of "non-transferable assets." Non-transferable assets are defined as either a proprietary product of a delivering organization or as an asset that is the product of a third party (e.g., a mutual fund). When transferring

account assets in whole, the Interpretation of Rule 412 requires that a customer be provided a letter with disposition options consistent with closing out an account regarding any non-transferable assets.<sup>8</sup> This requirement would not be applicable to partial transfers since a request to transfer specifically designated assets would not result in closing the customer's account at the delivering firm.

### B. Customer Authorization

Rule 412 and its Interpretation currently make reference to "written" customer authorization requirements. The amendments to Rule 412(a) clarify the scope of such customer authorization to include electronic signatures "in a format recognized as valid under federal law to conduct interstate commerce." This modification contemplates legal alternatives to "pen and paper" methods of customer authorization on the condition that such methods otherwise comply with Rule 412 and its Interpretation.

### C. Prescribed Forms

The interpretation of Supplementary Material .30 to Rule 412 had required members use the transfer instructions and provide the reports prescribe by the NYSE when making account transfers pursuant to Rule 412 and that such instructions and reports must be substantially similar to those required by NSCC. Since NSCC no longer requires specific formats with respect to transfer instructions or reports, the Interpretation to Supplementary Material .30 is being deleted.

In order to allow member organizations sufficient time to develop and implement necessary system changes to comply with amended Rule 412, the NYSE will set an effective date six months from the date of Commission approval of the proposed amendments.

## II. Comment Letters

The Commission received three comment letters, all in support of the proposed rule change.<sup>9</sup> The commenters supported both the application of standard procedures to non-standard transfers (including partial transfers, fail reversals, reclaims, and mutual fund fail clean ups) and supported the clarification that client authorizations includes electronic signatures in a format recognized as valid under federal

law to conduct interstate commerce.<sup>10</sup> The commenters believe that these changes will enhance and streamline the account transfer process and will ultimately benefit investors.

## III. Discussion

Section 6(b)(5) of the Act that requires rules of an exchange are designed to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.<sup>11</sup> As amended, Rule 412 expands the scope of transactions required to be processed through ACATS in order to include non-standard transfers (e.g., partial transfers, fail reversals, reclaims, and mutual fund fail clean-ups) and allows broker-dealers to accept electronic signatures in a format recognized as valid under Federal law for such transactions. In so doing, the rule change should expedite the transfer of customer assets between broker-dealers, increase broker-dealer accountability in transferring customer accounts, and further competition among broker-dealers by more easily allowing investors to transfer their assets to the broker-dealer of their choice. For these reasons, the Commission believes that the NYSE's rule change is consistent with the exchange's obligations under the Act.

## IV. 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 6 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–NYSE–2003–29) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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<sup>5</sup> Rule 412(e)(1) will not provide an exception to the members' obligation to accomplish transfers in accordance with NSCC's rules when the customer authorizes alternative instructions to transfer "specifically designated assets." The phrase "specifically designated assets" refers to partial transfers only. Telephone conversation between the NYSE, NSCC, and Commission staff (November 20, 2003).

<sup>6</sup> Rule 412 Interpretation (b)(1)/01.

<sup>7</sup> NYSE Rule 412(e)(3) and (e)(4).

<sup>8</sup> Rule 412 Interpretation (b)(1)/06.

<sup>9</sup> *Supra* note 3.

<sup>10</sup> The commenters noted that the description of the proposed rule change only mentioned partial transfers as non-standard functionality, but the rule change as filed by the NYSE encompasses all non-standard transfers such as fail reversals, reclaims, and mutual fund fail clean ups.

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> 17 CFR 200.30–3(a)(12).