

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. 552(b)(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.

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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.

Act,⁸ which requires, among other things, that the Association's rules 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 Commission also finds that the proposal, as amended, is consistent with section 15A(b)(7) of the Act,⁹ in that it will allow for reasonable safeguarding of investors' interests while establishing fair and reasonable rules for the Association's members and persons associated with its members. The Commission also finds the proposal is consistent with section 15A(b)(8) of the Act,¹⁰ in that it furthers the statutory goal of providing a fair procedure for disciplining the Association's members and associated persons. Finally, the Commission finds the proposal is consistent with Securities Exchange Act Rule 19d-1(c)(2)¹¹ that governs minor rule violation plans.

In approving this proposal, the Commission in no way minimizes the importance of compliance with these rules, and all other rules subject to the imposition of fines under the Association's MRVP. The Commission believes that the violation of any self-regulatory organizations' rules, as well as Commission rules, is a serious matter. However, in an effort to provide the Association with greater flexibility in addressing certain violations, the MRVP provides a reasonable means to address rule violations that do not rise to the level of requiring formal disciplinary proceedings. The Commission expects that the Association will continue to conduct surveillance with due diligence, and make a determination based on its findings whether fines of more or less than the recommended amount are appropriate for violations of rules under its MRVP, on a case by case basis, or if a violation requires formal disciplinary action.

The Commission finds good cause for approving proposed Amendment No. 3 before the 30th day after the date of publication of notice of filing of Amendment No. 3 in the **Federal Register**. The Association filed Amendment No. 3 largely in response to concerns raised by the Commission regarding language in the original proposal, and ambiguity regarding how the Association intended to monitor violations of certain rules if those rules were administered under the Association's MRVP. Amendment No. 3

clarifies the ambiguities noted by the Commission and eliminates some rules that did not lend themselves to enforcement through an MRVP to address the Commission's concerns. The substantive changes implemented in Amendment No. 3 warrant accelerated approval. For these reasons, the Commission finds good cause for accelerating approval of Amendment No. 3.

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 3, including whether proposed Amendment No. 3 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 filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR-NASD-00-39 and should be submitted by August 3, 2001.

It Therefore Is Ordered, pursuant to section 19(b)(2) of the Act,¹² that the proposed rule change (SR-NASD-00-39), including Amendment Nos. 1, 2 and 3, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01-17518 Filed 7-12-01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44522; File No. SR-NASD-2001-36]

Self-Regulatory Organizations; Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. to Eliminate the Service Desk Feature of the Automated Confirmation Transaction Service

July 6, 2001.

On May 16, 2001, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-6 thereunder,² a proposed rule change to eliminate the Service Desk feature of the Automated Confirmation Transaction Service ("ACT"). Nasdaq amended the proposal on May 31, 2001,³ and again amended the proposal on June 7, 2001.⁴

The proposal, as amended, was published in the **Federal Register** on June 19, 2001.⁵ The Commission received no comments on the proposal.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association⁶ and, in particular, the requirements of section 15A of the Act⁷ and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 15A(b)(6) of the Act,⁸ which requires that the Association's rules be designed 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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-6.

³ See May 30, 2001 letter from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission and attachments.

⁴ See June 6, 2001 letter from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission.

⁵ See Securities Exchange Act Release No. 44411 (June 12, 2001), 66 FR 32971.

⁶ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁷ 15 U.S.C. 78o-3.

⁸ 15 U.S.C. 78o-3(b)(6).

⁸ 15 U.S.C. 78o-3(b)(6).

⁹ 15 U.S.C. 78o-3(b)(7).

¹⁰ 15 U.S.C. 78o-3(b)(8).

¹¹ 17 CFR 240.19d-1(c)(2).

¹² 15 U.S.C. 78s(b)(2).

¹³ 17 CFR 200.30-3(a)(12).