

March 31, 2004

Katherine A. England
Assistant Director
Division of Market Regulation
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-1001

**Re: File No. SR-NASD-2004-058 - Proposed Amendments to Rule 11870 Relating to
Non-Standard Transfers of Customer Account Assets**

Dear Ms. England:

Pursuant to Rule 19b-4, enclosed please find the above-numbered rule filing. Also enclosed is a 3-1/2" disk containing the rule filing in Microsoft Word 7.0 to facilitate production of the Federal Register release.

If you have any questions, please contact Shirley H. Weiss, Office of General Counsel, Regulatory Policy and Oversight, at (202) 728-8844; e-mail Shirley.Weiss@nasd.com. The fax number of the Office of General Counsel is (202) 728-8264.

Very truly yours,

Barbara Z. Sweeney
Senior Vice President
and Corporate Secretary

Enclosures

File No. SR-NASD-2004-058
Consists of 35 Pages
March 31, 2004

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C.

Form 19b-4

Proposed Rule Change

by

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

Pursuant to Rule 19b-4 under the
Securities Exchange Act of 1934

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), the National Association of Securities Dealers, Inc. ("NASD") is filing with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to amend NASD 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 unless the customer authorizes alternative instructions to transfer specifically designated assets. The proposed rule change also would provide that a customer may authorize an account transfer, in whole or in part, via electronic signature in a format recognized as valid under federal law to conduct interstate commerce. The proposed rule change also would delete the requirement that members use the transfer instructions and provide the reports prescribed by NASD when accomplishing account transfers under the Rule. The text of the proposed rule change is attached as Exhibit 2 to this Rule Filing.

Proposed new language is underlined; proposed deletions are in brackets.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

(a) The proposed rule change was approved by the Board of Directors of NASD Regulation, Inc. at its meeting on January 21, 2004, which authorized the filing of the rule change with the SEC. Counsel for The Nasdaq Stock Market and NASD Dispute Resolution have been provided an opportunity to consult with respect to the proposed rule

change, pursuant to the Plan of Allocation and Delegation of Functions by NASD to its Subsidiaries. The NASD Board of Governors had an opportunity to review the proposed rule change at its meeting on January 22, 2004. No other action by NASD is necessary for the filing of the proposed rule change. Section 1(a)(ii) of Article VII of the NASD By-Laws permits the NASD Board of Governors to adopt amendments to NASD Rules without recourse to the membership for approval.

In order to allow members sufficient time to develop and implement necessary system changes to comply with amended Rule 11870, NASD proposes to set an implementation date of September 20, 2004. NASD will announce the implementation date of September 20, 2004 in a Notice to Members to be published no later than 30 days following Commission notice of the effective date of the proposed rule change.

(b) Questions regarding this rule filing may be directed to Shirley H. Weiss, Associate General Counsel, Office of General Counsel, Regulatory Policy and Oversight, at (202) 728-8844.

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The purpose of the proposed rule change is to amend Rule 11870 to make the procedures for making non-standard transfers (i.e., the transfer of specifically designated assets) through ACATS consistent with the procedures for standard transfers through ACATS (i.e., transfers of accounts in their entirety). The proposed rule change would also permit a customer to authorize the delivering member to transfer specifically

designated account assets outside of ACATS. In addition, the proposed rule change would permit a customer to authorize an account transfer, in whole or in part, via 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 New York Stock Exchange Rule 412 and the Interpretation of Rule 412.¹

Rule 11870(a) prescribes procedures for members to transfer customer accounts. The Rule currently states that broker-dealers must utilize ACATS for non-standard as well as standard transfers; however, the text of the current rule generally refers to the transfer of an entire securities account. As amended, Rule 11870 would generally apply the same procedural standards to non-standard (e.g., partial transfers, fail reversals, reclaims, and mutual fund fail clean-ups) as well as standard transfers 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, the proposed amendments to Rule 11870 would distinguish between the transfer of security account assets "in whole" (i.e., transfer of entire accounts) and security account assets "in specifically designated part" (i.e., partial transfers). This distinction is necessary given the different obligations that result from transferring an entire account to a receiving firm as opposed to

¹ Exchange Act Rel. No. 49415 (File No. SR-NYSE-2003-29) (March 12, 2004), 69 Fed. Reg. 13608 (March 23, 2004).

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 would also permit customers to authorize alternative instructions for the transfer of "specifically designated assets" from one broker-dealer to another. This proposed rule change would therefore create an exception to a member's obligation to transfer specifically designated assets, i.e., a partial transfer, 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 his or her account 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 would provide that the customer may authorize an account transfer, in whole or in part, via electronic signature "in a format recognized as valid under federal law to conduct interstate commerce." Thus, customer authorization of a transfer instruction could be either the customer's actual signature or a valid electronic signature.

Proposed Rule 11870 would also delete the requirement that members use the transfer instructions and provide the reports prescribed by NASD when accomplishing account transfers under the Rule. Since the NSCC no longer requires specific formats with respect to transfer instructions or reports, this requirement is no longer necessary.

(b) Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, 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. NASD believes that the proposed rule change is designed to accomplish these ends 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 partial transfer of assets outside of ACATS, and permitting customers to authorize an account transfer, in whole or in part, via electronic signature in a format recognized as valid under federal law to conduct interstate commerce. These 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 recently proposed amendments to NYSE Rule 412 and the Interpretation of Rule 412.

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

NASD 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, as amended.

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

Written comments were neither solicited nor received.

6. Extension of Time Period for Commission Action

NASD does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

The proposed rule change to Rule 11870 is intended to conform to proposed amendments to NYSE Rule 412 and the Interpretation to Rule 412. NASD believes that it is important that Rule 11870 and NYSE Rule 412 and the Interpretation to Rule 412 conform to avoid imposing confusing or inconsistent requirements on the securities industry.

9. Exhibits

1. Completed notice of proposed rule change for publication in the Federal Register.

2. Proposed rule text.

Pursuant to the requirements of the Securities Exchange Act of 1934, NASD has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

NASD, INC.

BY: _____
Barbara Z. Sweeney, Senior Vice President and
Corporate Secretary

Date: March 31, 2004

EXHIBIT 1

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

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Partial Customer Account Transfers

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 , the National Association of Securities Dealers, Inc. (“NASD”), 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. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

I. SELF-REGULATORY ORGANIZATION'S STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

NASD is proposing to amend 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. The text of the proposed rule change is attached as an Exhibit to this Rule Filing. Proposed new language is underlined; proposed deletions are in brackets.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 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 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

The purpose of the proposed rule change is to amend Rule 11870 to make the procedures for making non-standard transfers (i.e., the transfer of specifically designated assets) through ACATS consistent with the procedures for standard transfers through ACATS (i.e., transfers of accounts in their entirety). The proposed rule change would also permit a customer to authorize the delivering member to transfer specifically designated account assets outside of ACATS. In addition, the proposed rule change would permit a customer to authorize an account transfer, in whole or in part, via 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 New York Stock Exchange Rule 412 and the Interpretation of Rule 412.³

Rule 11870(a) prescribes procedures for members to transfer customer accounts. The Rule currently states that broker-dealers must utilize ACATS for non-standard as well as standard transfers; however, the text of the current rule generally refers to the transfer of an entire securities account. As amended, Rule 11870 would generally apply the same procedural standards to non-standard (e.g., partial transfers, fail reversals, reclaims, and mutual fund fail clean-ups) as well as standard transfers 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, the proposed amendments to Rule 11870 would distinguish between the transfer of security account assets "in whole" (i.e., transfer of entire accounts) and security account assets "in specifically designated part" (i.e., partial transfers). This distinction is necessary given the different obligations that result from transferring an entire account to a receiving firm as opposed to 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 would also permit customers to authorize alternative instructions for the transfer of "specifically designated assets" from one broker-dealer to

³ Exchange Act Rel. No. 49415 (File No. SR-NYSE-2003-29) (March 12, 2004), 69 Fed. Reg. 13608 (March 23, 2004).

another. This proposed rule change would therefore create an exception to a member's obligation to transfer specifically designated assets, i.e., a partial transfer, 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 his or her account 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 would provide that the customer may authorize an account transfer, in whole or in part, via electronic signature "in a format recognized as valid under federal law to conduct interstate commerce." Thus, customer authorization of a transfer instruction could be either the customer's actual signature or a valid electronic signature.

Proposed Rule 11870 would also delete the requirement that members use the transfer instructions and provide the reports prescribed by NASD when accomplishing account transfers under the Rule. Since the NSCC no longer requires specific formats with respect to transfer instructions or reports, this requirement is no longer necessary.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, 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.

NASD believes that the proposed rule change is designed to accomplish these ends 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 partial transfer of assets outside of ACATS, and permitting customers to authorize an account transfer, in whole or in part, via electronic signature in a format recognized as valid under federal law to conduct interstate commerce. These 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 recently proposed amendments to NYSE Rule 412 and the Interpretation of Rule 412.

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

NASD 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, as amended.

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

Written comments were neither solicited nor received.

III. DATE OF EFFECTIVENESS OF THE PROPOSED RULE CHANGE AND TIMING FOR COMMISSION ACTION

NASD has requested that the Commission find good cause pursuant to Section 19(b)(2) for approving the proposed rule change prior to the 30th day after publication in the Federal Register. The Commission finds that the proposed rule change is consistent

with the requirements of the Act and the rules and regulations thereunder applicable to NASD and, in particular, the requirements of Section 15A and the rules and regulations thereunder. The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof because the proposed rule change will benefit public customers by facilitating and expediting the transfer of designated customer account assets from one broker-dealer to another broker-dealer, where both the receiving and delivering firm are members of the NSCC. Further, the proposed rule change is intended to conform Rule 11870 to recent amendments to New York Stock Exchange ("NYSE") Rule 412 and the Interpretation to Rule 412

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, N.W., Washington, D.C. 20549. 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 us 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 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 NASD. All submissions should refer to the file number in the caption above and should be submitted by [insert date 21 days from the date of publication].

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland
Deputy Secretary

EXHIBIT 2

Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

11870. Customer Account Transfer Contracts

(a) Responsibility to Expedite Customer's Request

(1) When a customer whose securities account[(s)] is carried by a member (the "carrying member") wishes to transfer [the entire] securities account[(s)] assets, in whole or in specifically designated part, to another member (the "receiving member") and gives [written notice of that fact] authorized instructions to the receiving member, both members must expedite and coordinate activities with respect to the transfer.

(2) If a customer desires to transfer a portion of [an] his or her account outside of ACATS, [a letter of authorization] authorized alternate instructions should be transmitted to the carrying member indicating such intent and specifying the [portion of the account] designated assets to be transferred. Although such transfers are not subject to the provisions of this [r]Rule, members must expedite all authorized [partial transfers of customer securities accounts] account asset transfers, whether through ACATS or via other means permissible under this Rule, and coordinate their activities with respect thereto. Unless otherwise indicated, [T]the automated customer account transfer capabilities referred to in paragraph (m)(1) of this Rule shall be utilized for partial transfers.

(3) For purposes of this Rule, customer authorization pursuant to a transfer instruction could be the customer's actual signature, or an electronic signature in a format recognized as valid under federal law to conduct interstate commerce.

(b) Transfer Procedures

(1) Upon receipt from the customer of [a signed] an authorized broker-to-broker transfer instruction form ("TIF") to receive such customer's securities account[(s)] assets in whole or in specifically designated part, from the carrying member, the receiving member must immediately submit such instruction to the carrying member. The carrying member must, within three business days following receipt of such instruction, or receipt of a TIF received directly from the customer authorizing the transfer of assets in specifically designated part: (A) validate [and return] the transfer instruction to the receiving member (with an attachment reflecting all positions and money balances to be transferred as shown on its books); or (B) take exception to the transfer instruction for reasons other than securities positions or money balance discrepancies and advise the receiving member of the exception taken.

(2) The carrying member and the receiving member must promptly resolve any exceptions taken to the transfer instruction.

(c) Transfer Instructions

(1) Securities [A] account asset transfers accomplished pursuant to this Rule are subject to the following conditions, which the customer must be informed of, affirm, or authorize (as the case may be) through their inclusion in the transfer instruction [form] the customer is required to [be completed and signed] authorize to initiate the account asset transfer:

(A) To the extent any account assets [in the account] are not readily transferable, with or without penalties, such assets may not be transferred within the time frames required by [the] this Rule.

(B) The customer will be contacted in writing by the carrying member, and/or by the receiving member, with respect to the disposition of [any] nontransferable assets [in the account that are nontransferable.] other than proprietary money market fund assets (if any), indicated in an instruction to transfer specifically designated account assets. (See subparagraph (c)(D)(3) below for customer notification requirements pertaining to transfers of securities account assets in whole.)

(C) If [With respect to transfers of] securities accounts assets in whole other than retirement plan [securities] account[s] assets are being transferred, the customer must affirm[s] that he or she has destroyed or returned to the carrying member any credit/debit cards and/or unused checks issued in connection with the account.

(D) For purposes of this Rule, a "nontransferable asset" shall mean an asset that is incapable of being transferred from the carrying member to the receiving member because it is:

(i) an asset that is a proprietary product of the carrying member;

(ii) an asset that is a product of a third party (e.g., mutual fund/money market fund) with which the receiving member does not maintain the relationship or arrangement necessary to receive/carry the asset for the customer's account;

(iii) an asset that may not be received due to regulatory limitations on the scope of the receiving member's business;

(iv) an asset that is a bankrupt issue for which the carrying member does not possess the proper denominations to effect delivery and no transfer agent is available to re-register the shares;

(v) an asset that is an issue for which the proper denominations cannot be obtained pursuant to governmental regulation or the issuance terms of the product (e.g., foreign securities, baby bonds, etc.);

(vi) limited partnership interests in retail accounts.

(E) The carrying member and the receiving member must promptly resolve and reverse any nontransferable assets [which] that were not properly identified during validation. In all cases, each member shall

promptly update its records and bookkeeping systems and notify the customer of the action taken.

(2) A proprietary product of the carrying member shall be deemed nontransferable unless the receiving member has agreed to accept transfer of the product. Upon receipt of the asset validation report, the receiving member shall designate any assets that are a product of a third party (e.g., mutual fund/money market fund) with which the receiving member does not maintain the relationship or arrangement necessary to receive/carry the asset for the customer's account. The carrying member, upon receipt of such designation, may treat such designated assets as nontransferable and refrain from transferring the designated assets.

(3) If [an] securities account assets to be transferred in whole include[s] any nontransferable assets that are proprietary products of the carrying member, the carrying member must provide the customer with a list of the specific assets and request, in writing and prior to or at the time of validation of the transfer instruction, further instructions from the customer with respect to the disposition of such assets. In particular, such request should provide, where applicable, the customer with the following alternative methods of disposition for nontransferable assets:

(A) Liquidation, with a specific indication of any redemption or other liquidation-related fees that may result from such liquidation and that those fees may be deducted from the money balance due the customer.

(B) Retention by the carrying member for the customer's benefit.

(C) Transfer, physically and directly, in the customer's name to the customer.

(4) If [an] securities account assets to be transferred in whole include[s] any nontransferable assets that the receiving member has designated as assets that are a product of a third party (e.g., mutual fund/money market fund) with which the receiving member does not maintain the relationship or arrangement necessary to receive/carry the asset for the customer's account, the receiving member must provide the customer with a list of the specific assets and request, in writing and prior to the time it makes such designation, further instructions from the customer with respect to the disposition of such assets. In particular, such request should, where applicable, provide the customer with the following alternative methods of disposition for nontransferable assets:

(A) Liquidation, with a specific indication of any redemption or other liquidation-related fees that may result from such liquidation and that those fees may be deducted from the money balance due the customer. The indication must also refer the customer to the fund prospectus or to their registered representative at the carrying firm for specific details regarding any such fees.

(B) Retention by the carrying member for the customer's benefit.

(C) Shipment, physically and directly, in the customer's name to the customer.

(D) Transfer to the third party that is the original source of the product, for credit to an account opened by the customer with that third party.

(5) If the customer has authorized liquidation or transfer of assets deemed to be nontransferable, the carrying member must distribute the resulting money balance to the customer or initiate the transfer within five (5) business days following receipt of the customer's disposition instructions.

(6) With respect to transfers of retirement plan securities account[s] assets, the customer authorizes the custodian/trustee for the account:

(A) to deduct any outstanding fees due the custodian/trustee from the credit balance in the account, or

(B) if the account does not contain a credit balance, or if the credit balance in the account is insufficient to satisfy any outstanding fees due the custodian/trustee, to liquidate assets in the account to the extent necessary to satisfy any outstanding fees due the custodian/trustee.

(d) Validation of Transfer Instructions

(1) Upon validation of an an [transfer] instruction to transfer securities account assets in whole, a carrying member must "freeze" the account to be transferred, i.e., all open orders, with the exception of option positions [which] that expire within seven (7) business days, must be canceled and no new orders may be taken.

(2) A carrying member may not take exception to a transfer instruction, and therefore deny validation of the transfer instruction, because of a dispute over securities positions or the money balance in the account to be transferred. Such alleged discrepancies notwithstanding, the carrying member must transfer the securities positions and/or money balance reflected on its books for the account.

(3) A carrying member may take exception to a transfer instruction only if:

(A) additional documentation is required (additional legal documents such as death or marriage needed);

(B) the account is "flat" and reflects no transferable assets;

(C) the account number is invalid (account number is not on carrying member's books); however, if the carrying member has changed the account number for purposes of internally reassigning the account to another broker or account executive, it is the responsibility of the carrying firm to track the changed account number, and such reassigned account number shall not be considered invalid for purposes of fulfilling a transfer instruction.

(D) it is a duplicate request;

(E) violates member's credit policy;

(F) unrecognized residual credit asset (receiving member cannot identify client);

(G) client rescinds instruction (client submitted written request to cancel transfer);

(H) S.S. number/Tax ID mismatch (number does not correspond to carrying member's);

(I) account title mismatch (receiving member's account title does not correspond to carrying member's);

(J) account type mismatches (receiving member's account type does not correspond to carrying member's);

(K) missing or improper [A]authorization [Signature] (TIF requires an additional client [signature] authorization or successor custodian's acceptance [signature] authorization or custodial approval); or

(L) Client takes possession (account assets in question [(entire account is] are in transfer to deliver direct to customer).

(4) If a carrying member takes exception to a transfer instruction because the account is "flat", as provided in subparagraph (3)(B) above, the receiving member may re-submit the transfer instruction only if the most recent customer statement is attached.

(5) (A) Upon validation of [a] an [transfer] instruction[,] to transfer securities account assets in whole or in specifically designated part, the carrying member must return the transfer instruction to the receiving member with an attachment indicating all securities positions, [any] safekeeping positions, and [any] money balances to be transferred [in the account] as shown on the books of the carrying member. Except as hereinafter provided, the attachment must include a then-current market

value for all assets [in the account] so indicated. If a then-current market value for an asset cannot be determined (e.g., a limited partnership interest), the asset must be valued at original cost. However, delayed delivery assets, nontransferable assets, and assets in transfer to the customer, i.e., in possession of the transfer agent at the time of receipt of the transfer instruction by the carrying member for shipment, physically and directly to the customer, need not be valued, although the "delayed delivery," "nontransferable," or "in-transfer" status, respectively, of such assets must be indicated on the attachment.

(B) For purposes of this Rule, a "safekeeping position" shall mean any security held by a carrying member in the name of the customer.

(6) Upon validation of [a] an [transfer] instruction to transfer securities account assets in whole or in specifically designated part, the carrying member must indicate on the instruction, or by attachment, any Regulation T calls outstanding as of the date of validation with respect to the account assets to be transferred.

(7) A carrying member must provide the following description, at a minimum, as asset data with respect to any municipal securities positions to be transferred that have not been assigned a CUSIP number: [in an account it is to transfer:]

(A) name of the issuer;

(B) interest rate and dated date;

(C) maturity date and put date, if applicable, and if the securities are limited tax, subject to redemption prior to maturity (callable), or revenue bonds; an indication to such effect, including in the case of revenue bonds, the type of revenue, if necessary for a materially complete description of the securities; and

(D) if necessary for a materially complete description of the securities, the name of any company or other person in addition to the issuer obligated, directly or indirectly, with respect to debt service, or if there is more than one such obligor, the statement "multiple obligors" may be shown.

(8) After validation of the transfer instruction by the carrying member, a receiving member may reject a[n account]transfer of account assets in whole only if the account is not in compliance with the receiving member's credit policies or minimum asset requirements. (A receiving member may deem an account not in compliance with Regulation T requirements as not in compliance with its credit policies.) A receiving member, however, may only reject [an] the entire account for such reasons; it may not reject only a portion of the account assets (e.g., the particular assets not in compliance with the member's credit policies or minimum asset requirement) while accepting the remainder.

(e) Completion of the Transfer

Within three business days following the validation of a transfer instruction, the carrying member must complete the transfer of the customer's security account[(s)] assets

to the receiving member. The receiving member and the carrying member must immediately establish fail-to-receive and fail-to-deliver contracts at then-current market values upon their respective books of account against the long/short positions [in the customer's account[(s)] that have not been [physically] delivered/received and the receiving/carrying member must debit/credit the related money amount. The customer's security account[(s)] assets shall thereupon be deemed transferred.

(f) Fail Contracts Established

(1) Any fail contracts resulting from this securities account asset transfer procedure shall be included in a member's fail file and, not later than 10 business days following the date delivery was due, the member shall take steps to obtain physical possession or control of securities so failed to receive by initiating a buy-in procedure or otherwise; provided, that with respect to the following types of securities or instruments, not later than 30 business days following the date delivery was due, the member shall take steps to obtain physical possession or control of securities so failed to receive by initiating a buy-in procedure or otherwise:

- (A) banker's acceptances;
- (B) bond anticipation notes;
- (C) certificates of deposit;
- (D) commercial paper;
- (E) FMAC certificates;
- (F) FNMA certificates;

- (G) foreign securities;
- (H) GNMA certificates;
- (I) limited partnership interests;
- (J) municipal bonds;
- (K) mutual fund shares (transferable);
- (L) revenue anticipation notes;
- (M) SBA certificates; and
- (N) tax anticipation notes.

(2) A carrying member may not reject ("DK") a fail contract, including a Receive/Deliver Instruction generated by an automated customer account transfer system, in connection with assets in an account transferred that have not been delivered to the receiving member.

(3) All fail contracts established pursuant to the requirements of this Rule should be clearly marked or captioned as such. This paragraph will not apply if a fail contract participates in a repricing and reconfirmation service offered by a registered clearing agency.

(4) All fail contracts required to be established on safekeeping positions must be so indicated.

(5) Open fail contracts established pursuant to the requirements of this Rule should be marked-to-market regularly.

(6) Nontransferable assets and assets in transfer to the customer are exempt from the requirement in paragraph (e) of this Rule that fail-to-receive and fail-to-

deliver contracts must be established for positions in a customer's securities account that have not been [physically] delivered.

(7) Members may agree to close out fail contracts established pursuant to the requirements of this [r]Rule through the delivery of securities that are substantially comparable to those owed with prior consent of the customer.

(8) A receiving member should reject a delivery of a security that cannot be deemed a safekeeping position against a fail contract as such.

(9) A receiving member must deem receipt of a duly executed limited partnership change of trustee form with respect to limited partnership interests or a mutual fund re-registration form with respect to mutual fund shares as adequate delivery for purposes of transferring such assets pursuant to the Rule.

(g) Prompt Resolution of Discrepancies

(1) Any discrepancies relating to positions or money balances that exist or occur after transfer of a customer's securities account assets must be resolved promptly.

(2) The carrying member must promptly distribute to the receiving member any transferable assets [which] that accrue to the account after the transfer of a customer's securities account.

(3) When a member receives a [written] claim [letter] notice relating to a[n] securities account asset transfer, the member must resolve the claim within five (5) business days from receipt of such [letter] claim or [respond in writing]

take exception to the claiming member by setting forth specific reasons for denying the claim.

(h) and **(i)** No change

(j) Exemptions

(1) Pursuant to the Rule 9600 Series, [the Association] NASD may exempt from the provisions of this Rule, either unconditionally or on specified terms and conditions, (A) any member or (B) any type of account, security or financial instrument.

(2) The following assets are deemed subject to delayed delivery and are exempt from paragraph (e) of this Rule that valued fail-to-receive and fail-to-deliver contracts must be established for positions in a customer's securities account that have not been [physically] delivered:

(A) insurance policies (annuities);

(B) stripped coupons;

(C) when-issued or when-distributed securities.

(3) Zero value fail-to-receive and fail-to-deliver instructions shall be generated for the assets specified in paragraph (j)(2) hereof.

(k) Retirement Plan Securities Accounts

(1) It is the responsibility of the receiving member to obtain the approval of its custodian/trustee accepting a customer's retirement plan securities account before submitting a transfer instruction for such [an] account assets to the carrying member or its custodian/trustee to facilitate transfer of the account assets.

(2) If, with respect to the transfer of a retirement plan securities account assets, outstanding fees are due the custodian/trustee for the account, such fees must be deducted from the credit balance in the account or, if the account does not contain a credit balance or if the credit balance is insufficient to satisfy such fees, assets in the account must be liquidated to the extent necessary to satisfy such fees. If liquidation of assets in the account is not practicable, such fees must then be transferred to and accepted by the receiving member as a debit item with the account.

(l) Securities Account[s]

For the purposes of this Rule, the term "securities account[(s)]" shall be deemed to include any and all of the account's[(s)] money market fund positions or the redemption value thereof.

(m) Participant in a Registered Clearing Agency

(1) When both the carrying member and the receiving member are participants in a registered clearing agency having automated customer securities account asset transfer capabilities and are eligible to use such capabilities, the securities account asset transfer procedure, including the establishing and closing out of fail contracts, must be accomplished in accordance with the provisions of this [r]Rule and pursuant to the rules of and through such registered clearing agency[.] with the exception of specifically designated assets transferred pursuant to the submittal of a customer's authorized alternate instructions to the carrying member.

(2) When such registered clearing agency has the capability to transfer mutual fund positions or to employ functionalities including Partial Transfer Receive (PTR), Partial Transfer Delivery (PTD), Fail Reversal, Mutual Fund Fail Cleanup, or Reclaim Processing, such capability must be utilized with the exception of specifically designated assets transferred pursuant to the submittal of a customer's authorized alternate instructions to the carrying member. [both the carrying member and the receiving member are participants in a registered clearing agency having automated customer securities account transfer capabilities with an automated facility for transferring mutual fund positions such facilities must be utilized for transferring mutual fund positions.]

(3) When securities account assets are transferred in whole and [both the carrying member and the receiving member are participants in a] such registered clearing agency [having automated customer securities account transfer capabilities with a facility for] has the capability to transfer[ring] residual credit positions (both cash and securities) [which] that have accrued to an account after the account has been transferred (residual credit processing), such [facilities] capability must be utilized for transferring residual credit positions from the carrying member to the receiving member.

(4) When both the carrying member and the receiving member are participants in a registered clearing agency having automated customer securities account asset transfer capabilities with a facility permitting electronic transmittal of

customer account assettransfer instructions, such facilities shall be used in accordance with the following:

(A) members using such facilities shall execute an agreement designated by the Committee specifying the rights, obligations and liabilities of all participants in or users of such facilities;

(B) customer account transfer instructions shall be transmitted in accordance with the procedures prescribed by the registered clearing agency;

(C) the transmittal of a transfer request through such electronic facilities shall constitute a representation by the receiving member that it has received a properly executed [Transfer Instruction Form] TIF or other actual authority to receive the customer's securities and funds[; and]

(D) transfer instructions transmitted through such facilities shall contain the information necessary for the clearing agency and the carrying member to respond to the transfer instruction as may be specified by this Rule and the clearing agency[.] and;

(E) non-standard ACAT processing, such as Partial Transfer Receives (PTR), Partial Transfer Deliver (PTD) Fail Reversal, and reclaim processing shall be transmitted through such facilities, if the facility permits.

(5) For purposes of this Rule, the term "registered clearing agency" shall be deemed to be a clearing agency as defined in the Act and registered in accordance with that Act.

(n) Transfers Accomplished Ex-Clearing

(1) If one or both of the members processing a customer account transfer pursuant to this Rule is not a member of a registered clearing agency, the fail-to-receive and fail-to-deliver contracts required to be established in paragraph (e) of this Rule must be established outside a clearing corporation on an "ex-clearing house" basis. Similarly, settlement of the fail contracts and any close-out executions must be made "ex-clearing house."

(2) Each member (including members that do not utilize automated customer securities account asset transfer facilities) is required, [to transfer,] for a minimum period of six (6) months after [an account] the transfer of securities account assets in whole is completed, to transfer credit balances (both cash and securities) that occur in such transferred account assets within (10) ten business days after the credit balances accrue to the account.

(3) A copy of each customer account transfer instruction issued pursuant to paragraph (b) on an "ex-clearing house" basis shall be forwarded to the local District Office of [the Association] NASD having jurisdiction over the carrying member.

[(4) Members must use the transfer instructions and provide the reports prescribed by the Association when accomplishing account transfers pursuant to

this Rule. The Association deems the transfer instruction and reports required by the National Securities Clearing Corporation ("NSCC") in connection with its automated customer account transfer system, and transfer instructions and reports that are substantially similar to those required by the NSCC as acceptable for the purpose of accomplishing transfers of accounts under this Rule; except that members must use the standard transfer forms required under Rule 11580 to transfer limited partnership securities unless exempted from the requirements of that Rule.]

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