

August 16, 2001

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-2001-53** - Proposed Rule Change to Amend Uniform
Practice Code Rule 11870(c) and Rule 11870(d)

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, NASD Regulation, Inc., 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,

Patrice M. Gliniecki
Vice President and
Deputy General Counsel

Enclosures

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” or “Association”), through its wholly owned subsidiary, NASD Regulation, Inc. (“NASD Regulation”), is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to amend NASD Uniform Practice Code Rules 11870(c) and 11870(d) to expedite the transfer of customer accounts that contain proprietary or third party products (e.g., mutual funds or money market funds) that the receiving member cannot receive or carry.

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

UNIFORM PRACTICE CODE

11870. Customer Account Transfer Contracts

(a) and (b) No change

(c) Transfer Instructions

(1) Account transfers accomplished pursuant to this Rule are subject to the following conditions, which the customer must be informed of, affirm, or authorize through their inclusion in the transfer instruction form required to be completed and signed to initiate the account transfer:

(A) No change.

(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 assets in the account that are nontransferable.

(C) and (D) No change.

(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 [their] 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.

[(2)] (3) If an account includes 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) through (C) No change.

(4) If an account to be transferred includes 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.

(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.

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

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

(A) and (B) No change.

(d) Validation of Transfer Instructions

(1) and (2) No change.

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

(A) and (B) No change.

(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) through (L) No change.

(4) through (8) No change.

(e) through (n) No Change

(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 at its meeting on April 25, 2001, which authorized the filing of the rule change with the SEC.

The Nasdaq Stock Market, Inc. and NASD Dispute Resolution, Inc. 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 the NASD to its Subsidiaries. The NASD Board of Governors had an opportunity to review the proposed rule change at its meeting on April 26, 2001. No other action by the 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.

The NASD will announce the effective date of the proposed rule change in a Notice to Members to be published no later than 60 days following Commission approval. The effective date will be approximately 30 days following publication of the Notice to Members announcing Commission approval.

(b) Questions regarding this rule filing may be directed to Shirley H. Weiss, Associate General Counsel, NASD Regulation, Office of General Counsel, 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 conform Uniform Practice Code Rule 11870 to recent modifications to the Automated Account Transfer Service ("ACATS"), which is administered by the National Securities Clearing Corporation ("NSCC"). Recent ACATS modifications offer the capability to facilitate the transfer of accounts containing third party and/or proprietary products. The proposed changes to Rules 11870(c) and 11870(d) would correspond to those modifications and would give member firms the ability to expedite the transfer of such accounts. The proposed rule

change also conforms to a recent amendment to the Interpretation of New York Stock Exchange ("NYSE") Rule 412.¹

Under current Rules 11870(c) and 11870(d), when a customer whose securities account(s) is carried by a member (the "carrying member") wishes to transfer the entire account(s) to another member (the "receiving member"), the customer submits a signed broker-to-broker transfer instruction to the receiving member. The receiving member immediately submits the instruction to the carrying member, and the carrying member has three business days either to validate and return the transfer instruction to the receiving member (with an attachment reflecting all positions and money balances as shown on its books) or to take exception to the instruction. Prior to or at the time of validation of the transfer instruction, the carrying member must notify the customer in writing with respect to the disposition of any assets in the account that it identifies as nontransferable, including any asset that is a proprietary product of the carrying member, and request instructions from the customer with respect to the disposition of such assets. The customer may ask the carrying member to liquidate the asset, continue to retain the asset, or transfer the asset in the customer's name to the customer.

The account(s), however, also may contain asset(s) that have not been identified by the carrying member as nontransferable because they are the 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(s). Notwithstanding the presence of such assets in the account, the carrying member currently must include such asset(s) in the transfer of the account(s), which must be completed within three business days following the validation of a transfer instruction. If the receiving

¹ See SEC Release No. 34-44596 (July 26, 2001), 66 F.R. 40306 (Aug. 2, 2001).

member is unable to receive/carry an asset that is a product of a third party, the receiving member must send the asset back to the carrying member.

The carrying member must complete the transfer of the account(s) to the receiving member within three business days following the validation of a transfer instruction. 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 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. These fails require substantial processing time for both the carrying and receiving members and require carrying members to credit the receiving firm funds equivalent to the value of the assets they are unable to deliver. The proposed rule change will reduce customer confusion in that customers will no longer receive multiple account statements from the carrying and receiving firms as they transfer and then reverse transactions.

The proposed rule change would allow the receiving member to review the asset validation report, designate those proprietary and/or third party assets it is unable to receive/carry, provide the customer with a list of those assets, and request instructions from the customer regarding their disposition. The customer may instruct the receiving member to liquidate the asset, continue to retain the asset, transfer the asset in the customer's name to the customer, or transfer the asset to the third party that is the original source of the product, but the transfer of the other assets in the account would occur simultaneously with the receiving member's designation of nontransferable assets. The proposed rule change should eliminate the present need for reversing the transfer of third party and/or proprietary

products, thereby reducing delay, and also reduce the cost of customer transfers incurred by members under the current system.

Current Rule 11870(d)(3)(C) provides that a member may take exception to a transfer instruction if the account number is invalid (account number is not on the carrying member's books). The proposed rule change to Rule 11870(d)(3)(C) will make clear that the carrying member is responsible for tracking account number changes; therefore, an account number that has been changed due to internal reassignment of an account to another broker or account executive with the carrying member will not be considered invalid for purposes of taking exception to a transfer instruction.

(b) Statutory Basis

NASD Regulation 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 the Association's 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 Regulation believes that the proposed rule change is designed to accomplish these ends by making the transfer of customer accounts faster and more efficient, reducing customer confusion, and facilitating the transfer of third-party and proprietary products. The proposed rule change will also conform NASD requirements to current NSCC requirements and to recent amendments to the Interpretation of NYSE Rule 412.

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

NASD Regulation 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.²

6. Extension of Time Period for Commission Action

NASD Regulation 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)

NASD Regulation requests the Commission to find good cause pursuant to Section 19(b)(2) for approving the proposed rule change prior to the 30th day after its publication in the Federal Register. NASD Regulation believes that the proposed rule change, which is intended to conform NASD Rules 11870(c) and 11870(d) to current NSCC requirements and to recent amendments to the Interpretation of NYSE Rule 412, will make the transfer of customer accounts faster and more efficient, reduce customer confusion, and facilitate the transfer of third-party and proprietary products; therefore, NASD Regulation requests the Commission to accelerate the effectiveness of the proposed rule change prior to the 30th day after its publication in the Federal Register.

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

The proposed rule change is intended to conform NASD Rules 11870(c) and 11870(d) to the Interpretation of NYSE Rule 412. NASD Regulation believes that it is important that Rules 11870(c)

² This proposed rule change was not published for comment by the NASD through its Notice to Members process.

and 11870(d) conform to NSCC's current requirements and NYSE's requirements 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.

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

NASD REGULATION, INC.

BY: _____
Patrice M. Gliniecki
Vice President and Deputy General Counsel

Date: August 16, 2001

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34- ; File No. SR-NASD-00-68)

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Amendment of Rule 11870(e) to Require Carrying Members to Transfer Customer Account(s) to the Receiving Member Within Three Days After Validation of a Transfer Instruction

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ notice is hereby given that on August ____, 2001, the National Association of Securities Dealers, Inc. (“NASD”), through its wholly owned subsidiary, NASD Regulation, Inc. (“NASD Regulation”) 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 Regulation. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

NASD Regulation is proposing to amend NASD Uniform Practice Code Rules 11870(c) and 11870(d) to expedite the transfer of customer accounts that contain proprietary or third party products (e.g., mutual funds or money market funds) that the receiving member cannot receive or carry.

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

¹ 15 U.S.C. 78s(b)(1).

UNIFORM PRACTICE CODE

11870. Customer Account Transfer Contracts

(a) and (b) No change

(c) Transfer Instructions

(1) Account transfers accomplished pursuant to this Rule are subject to the following conditions, which the customer must be informed of, affirm, or authorize through their inclusion in the transfer instruction form required to be completed and signed to initiate the account transfer:

(A) No change.

(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 assets in the account that are nontransferable.

(C) and (D) No change.

(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 [their] 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.

[(2)] (3) If an account includes 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) through (C) No change.

(4) If an account to be transferred includes 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.

(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.

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

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

(A) and (B) No change.

(d) Validation of Transfer Instructions

(1) and (2) No change.

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

(A) and (B) No change.

(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) through (L) No change.

(4) through (8) No change.

(e) through (n) No Change

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 Regulation 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 Regulation 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 conform Uniform Practice Code Rule 11870 to recent modifications to the Automated Account Transfer Service ("ACATS"), which is administered by the National Securities Clearing Corporation ("NSCC"). Recent ACATS modifications offer the capability to facilitate the transfer of accounts containing third party and/or proprietary products. The proposed changes to Rules 11870(c) and 11870(d) would correspond to those modifications and would give member firms the ability to expedite the transfer of such accounts. The proposed rule change also conforms to a recent amendment to the Interpretation of New York Stock Exchange ("NYSE") Rule 412.²

² See SEC Release No. 34-44596 (July 26, 2001), 66 F.R. 40306 (Aug. 2, 2001).

Under current Rules 11870(c) and 11870(d), when a customer whose securities account(s) is carried by a member (the "carrying member") wishes to transfer the entire account(s) to another member (the "receiving member"), the customer submits a signed broker-to-broker transfer instruction to the receiving member. The receiving member immediately submits the instruction to the carrying member, and the carrying member has three business days either to validate and return the transfer instruction to the receiving member (with an attachment reflecting all positions and money balances as shown on its books) or to take exception to the instruction. Prior to or at the time of validation of the transfer instruction, the carrying member must notify the customer in writing with respect to the disposition of any assets in the account that it identifies as nontransferable, including any asset that is a proprietary product of the carrying member, and request instructions from the customer with respect to the disposition of such assets. The customer may ask the carrying member to liquidate the asset, continue to retain the asset, or transfer the asset in the customer's name to the customer.

The account(s), however, also may contain asset(s) that have not been identified by the carrying member as nontransferable because they are the 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(s). Notwithstanding the presence of such assets in the account, the carrying member currently must include such asset(s) in the transfer of the account(s), which must be completed within three business days following the validation of a transfer instruction. If the receiving member is unable to receive/carry an asset that is a product of a third party, the receiving member must send the asset back to the carrying member.

The carrying member must complete the transfer of the account(s) to the receiving member within three business days following the validation of a transfer instruction. 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 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. These fails require substantial processing time for both the carrying and receiving members and require carrying members to credit the receiving firm funds equivalent to the value of the assets they are unable to deliver. The proposed rule change will reduce customer confusion in that customers will no longer receive multiple account statements from the carrying and receiving firms as they transfer and then reverse transactions.

The proposed rule change would allow the receiving member to review the asset validation report, designate those proprietary and/or third party assets it is unable to receive/carry, provide the customer with a list of those assets, and request instructions from the customer regarding their disposition. The customer may instruct the receiving member to liquidate the asset, continue to retain the asset, transfer the asset in the customer's name to the customer, or transfer the asset to the third party that is the original source of the product, but the transfer of the other assets in the account would occur simultaneously with the receiving member's designation of nontransferable assets. The proposed rule change should eliminate the present need for reversing the transfer of third party and/or proprietary products, thereby reducing delay, and also reduce the cost of customer transfers incurred by members under the current system.

Current Rule 11870(d)(3)(C) provides that a member may take exception to a transfer instruction if the account number is invalid (account number is not on the carrying member's books). The proposed rule change to Rule 11870(d)(3)(C) will make clear that the carrying member is responsible for tracking account number changes; therefore, an account number that has been changed due to internal reassignment of an account to another broker or account executive with the carrying member will not be considered invalid for purposes of taking exception to a transfer instruction.

(2) Statutory Basis

NASD Regulation 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 the Association's 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 Regulation believes that the proposed rule change is designed to accomplish these ends by making the transfer of customer accounts faster and more efficient, reducing customer confusion, and facilitating the transfer of third-party and proprietary products. The proposed rule change will also conform NASD requirements to current NSCC requirements and recent amendments to the Interpretation of NYSE Rule 412.

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

NASD Regulation 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 Regulation 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 the 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 in that accelerated approval will benefit public customers by making the transfer of customer accounts faster and more efficient, reducing customer confusion, and facilitating the transfer of third-party and proprietary products. Further, the proposed rule change is intended to conform NASD Rules 11870(c) and 11870(d) to current NSCC requirements and to recent amendments to the Interpretation of NYSE Rule 412.

IV. SOLICITATION OF COMMENTS

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. 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. 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 the file number in the caption above and should be submitted by [insert date 21 days from the date of publication].

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

Jonathan G. Katz
Secretary