

those transactions that are ineligible for automated comparison.

## II. Discussion

Section 15B(b)(2)(C)<sup>9</sup> of the Act authorizes the MSRB to adopt rules to foster cooperative and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities. The MSRB also has the authority to adopt rules to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and in general to protect investors and the public interest. The Commission believes the MSRB's proposed rule change is consistent with the requirements of Section 15B(b)(2)(C) because it will require earlier confirmation of certain inter-dealer when-issued and regular way transactions and require a shorter settlement cycle for certain inter-dealer when-issued transactions. Furthermore, the amendments will conform the MSRB's rules regarding the settlement dates for when-issued transactions eligible for automated comparison at a registered clearing agency with the clearing agency's processing capabilities for these transactions. Finally, the amendments require underwriters to provide registered clearing agencies with interest rate and final maturity information about new issues as soon as such information is known. This should help ensure that clearing agencies have the information necessary to calculate accurately final money amounts and to provide complete and accurate descriptions of new issues in the automated comparison system and should promote accurate pricing and securities descriptions in the MSRB Transaction Reporting System which is linked to the automated comparison system.

Collectively, the amendments should facilitate automated comparison of transactions in municipal securities and foster cooperation and coordination with persons involved in the clearance and settlement of municipal securities by making MSRB rules and clearing agency processing capabilities consistent thus enabling the municipal securities market to maximize the benefits and efficiencies from the automated comparison system and by helping to ensure more timely confirmation of certain municipal transactions thereby increasing the likelihood that such transactions will settle within the shorter settlement cycle established in this proposal.

Finally, the proposal should remove impediments to and perfect the mechanisms of a free and open market in municipal securities by requiring more efficient and accurate reporting of transaction information by underwriters to clearing agencies and thus to the MSRB Transaction Reporting System.

## III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 15B of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-MSRB-95-14) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

Jonathan G. Katz,

Secretary.

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[Release No. 34-36612; File No. SR-NASD-95-30]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to the Commencement of Third Market Trading in Initial Public Offerings of Exchange-Listed Securities

December 20, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on June 19, 1995, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which have been prepared by the self-regulatory organization. On December 15, 1995, the NASD filed with the Commission Amendment No. 1 to the proposal which clarifies the operation of the proposed amendment, and requests accelerated effectiveness of the proposed rule change.<sup>3</sup> The Commission is publishing this notice to

<sup>10</sup> 17 CFR 200.30-3(a)(12) (1994).

<sup>1</sup> 15 U.S.C. § 78s(b)(1) (1988).

<sup>2</sup> 17 CFR 240.19b-4 (1991).

<sup>3</sup> See letter from Joan Conley, Corporate Secretary, NASD, to Mark Barracca, Branch Chief, Commission, dated December 15, 1995.

solicit comments on the proposed rule change from interested persons.

## I. Self-Regulatory Organization's Statement of the Terms and Substance of the Proposed Rule Change

The NASD proposes to amend Section 4 of Schedule G to the NASD By-Laws to prohibit NASD members from executing over-the-counter transactions in an exchange-listed security that is the subject of an initial public offering ("IPO security") until the security has opened for trading on the exchange that lists the security.<sup>4</sup> (Additions are in *italics*; deletions are bracketed.)

### Schedule G

#### Sec. 1. Definitions

(a)-(f). No change.

(g) *The term "over-the-counter transaction" shall mean a transaction in an eligible security effected otherwise than on a national securities exchange.*

(h) *A security is subject to an "initial public offering" if: (1) the offering of the security is registered under the Securities Act of 1933; and (2) the issuer of the security, immediately prior to filing the registration statement with respect to such offering, was not subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934.*

\* \* \* \* \*

#### Sec. 4. Trading Practices

(a)-(h). No change.

(i) *No member or person associated with a member shall execute or cause to be executed, directly or indirectly, an over-the-counter transaction in a security subject to an initial public offering until such security has first opened for trading on the national securities exchange listing the security, as indicated by the dissemination of an opening transaction in the security by the listing exchange via the Consolidated Tape.*

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

In its filing with the Commission, the self-regulatory organization 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. The self-regulatory organization has prepared summaries, set forth in Section A, B, and C below, of the most significant aspects of such statements.

<sup>4</sup> The Commission notes that the paragraph designation within the proposed rule language, as originally filed, has been adjusted with the NASD staff's consent, to reflect an outstanding proposal currently under review with the Commission. Telephone conversation between Tom Gira, Assistant General Counsel, NASD, and Betsy Prout Lefler, Senior Counsel, Commission, on December 19, 1995.

<sup>9</sup> 15 U.S.C. § 78o-4(b)(2)(C).

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

The purpose of the proposed rule change is to add new Section 4(i) to Schedule G to the NASD By-Laws to provide that, after completion of an IPO of an exchange-listed security, NASD members and persons associated with NASD members are prohibited from executing over-the-counter transactions in the security until the exchange listing the security has first opened the stock for trading. Under the proposal, a stock is deemed to be first opened on the listing exchange when the exchange disseminates an opening transaction in the security via the Consolidated Tape.

Although it is common practice that participants in the third market refrain from trading an IPO security until the exchange listing the IPO opens the stock for trading, the NASD is submitting the instant proposal to prohibit trading in the third market until the security is first opened for trading on its listing exchange. While the NASD has found no evidence that the trading of IPOs in the third market has had any detrimental market effect, the NASD believes the proposed limited prohibition on the trading of IPOs in the market is a prudent precautionary step that is consistent with the orderly distribution and pricing of IPO securities.

Accordingly, the NASD believes the proposed rule change is consistent with Section 15A(b)(6) of the Act. Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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 mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. Specifically, the NASD believes the proposal will help to promote the fair and orderly distribution and pricing of IPO securities, thereby facilitating the capital formation process and promoting the protection of investors.

In addition, the NASD believes this proposal is consistent with recent rule amendments adopted by the Commission with respect to the procedures by which regional exchanges may extend unlisted trading privileges

("UTP") to IPO securities.<sup>5</sup> In the UTP Approval Order, the Commission shortened to one day, yet retained, the time period during which regional exchanges are prohibited from granting UTP to IPO securities. In adopting these rule changes, the Commission stated that it:

believes that a one-trading-day delay to precede UTP in listed IPOs is appropriated at this time primarily because the Commission is concerned that the first day of trading in an IPO on an exchange presents special circumstances, including initial pricing, an attempt to effectuate an orderly distribution of securities, high trading volume, and the resulting potential for high price volatility in the securities, that could have a significant effect on pricing and distribution of IPOs.<sup>6</sup>

Accordingly, under the NASD's proposal, even though the third market will still be able to trade an IPO security immediately after the listing exchange opens the stock for trading, the third market, like the regional exchanges, would be precluded from trading the securities until the primary market opens the stock for trading. In addition, the NASD notes that the Commission did not object to or raise concerns with the ability of the third market to trade an IPO on the day of the IPO, while the regional exchanges must wait one day before trading the issues. Specifically, the Commission stated that it is:

sympathetic to concerns that a one-day delay for exchange extensions of UTP will restrict regional exchange trading, while OTC dealers will continue to be free to trade the securities upon effective registration. The evidence \* \* \*, however, shows that in virtually all IPOs studied, OTC market makers trade the securities only in extremely small volume, if at all, on the first day of the IPO. The Commission believes, therefore, that any competitive advantage to OTC market makers is minimal, and is outweighed by the benefit to investors and the capital formation process that should be accrued by decreasing the risk of price volatility in the IPO securities.<sup>7</sup>

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

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

<sup>5</sup> See Securities Exchange Act Release No. 35637 (April 21, 1995), 60 FR 20891 ("UTP Approval Order").

<sup>6</sup> UTP Approval Order, *supra* Note 5, 60 FR at 20894.

<sup>7</sup> *Id.*

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

Comments were neither solicited nor received.

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

The NASD requests that the Commission find good cause to accelerate the effectiveness of the proposed rule change pursuant to Section 19(b)(2) of the Act because of the infrequency with which the third market is the first market to trade an exchange-listed IPO. Specifically, given that the third market is rarely the first market to trade an exchange-listed IPO, the NASD believes the proposal will have minimal impact on the third market, while serving as a prudent precautionary step designed to promote the orderly distribution and pricing of IPO securities. In addition, the NASD notes that its proposal is consistent with recent rule amendments adopted by the Commission in the UTP Approval Order with respect to the procedures by which regional exchanges can extend UTP to IPO securities. Accordingly, the NASD believes no regulatory purpose would be served by delaying approval of the NASD's proposal.

*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, NW., Washington, DC 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 at the Commission's Public Reference Room. All submissions should refer to File No. SR-NASD-95-30 and should be submitted by January 24, 1996.

*V. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change*

The Commission believes the proposed rule change is consistent with Section 15A(b)(6) of the Act. The Commission believes the proposal

should serve to promote just and equitable principles of trade and protect investors and the public interest by facilitating the orderly distribution and pricing of IPO securities. Specifically, the proposed mandatory delay in third market trading of IPO securities should help to minimize any potential risk of price volatility that may be associated with multiple-market trading of listed IPO securities before the listing exchange has provided for the first trade in the security. This should benefit investors and the capital formation process by decreasing the risk of price volatility in the IPO securities.

The Commission finds good cause for approving the proposed rule change prior the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. The Commission believes that accelerated approval of the proposal is appropriate because the proposal is an important precautionary measure for the protection of investors, yet accelerated approval should have minimal impact on market participants because the third market so rarely trades IPOs before the listing exchange effects the first trade in the securities.

It is therefore ordered, pursuant to Section 19(b)(2) <sup>8</sup> that the proposed rule change is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

Jonathan G. Katz,  
Secretary.

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[Release No. 34-36638; File No. SR-NASD-95-59]

**Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. to Amend Section 65 of the Uniform Practice Code to Require Members Who are Participants in a Registered Clearing Agency to Use the Electronic Facilities of such Agency to Transmit Customer Account Transfer Instructions**

December 26, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 16, 1995, the National Association of Securities Dealers, Inc. ("NASD" or "Association") 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 the NASD. 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**

The NASD proposes to amend Section 65 of the Uniform Practice Code (UPC) <sup>1</sup> to require members who are participants in a registered clearing agency to use the electronic facilities of such agency to transmit customer account transfer instructions. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

**UNIFORM PRACTICE CODE**

**Customer Account Transfer Contracts**  
Sec. 65.

\* \* \* \* \*

**Participant in a Registered Clearing Agency**

(m)(1) When both the carrying member and the receiving member are participants in a registered clearing agency having automated customer securities account transfer capabilities and are eligible to use such capabilities, the account transfer procedure, including the establishing and closing out of fail contracts, must be accomplished in accordance with the provisions of this rule and pursuant to the rules of and through such registered clearing agency.

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

(4) *When both the carrying member and the receiving member are participants in a registered clearing*

*agency having automated customer securities account transfer capabilities with a facility permitting electronic transmittal of customer account transfer 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 Section and the clearing agency.*

[(4)](5) For purposes of this rule, the term "registered clearing agency" shall be deemed to be a clearing agency as defined in the Securities Exchange Act of 1934 and registered in accordance with that Act.

\* \* \* \* \*

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

In its filing with the Commission, the 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. The 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**

**Background**

Section 65 of the UPC requires a customer who wishes to transfer an account from one member to another to give written notice (a Transfer Instruction Form or "TIF") to the member who will be receiving the

<sup>8</sup> 15 U.S.C. § 78s(b)(2) (1988).

<sup>9</sup> 17 CFR 200.30-3(a)(12) (1991).

<sup>1</sup> NASD Manual, Uniform Practice Code, Section 65 (CCH) ¶ 3565.