rule change pursuant to Rule 19b-4(f)(6) under the Act.[11] Nasdaq has stated that, because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative until more than 30 days from the date on which it was filed, and Nasdaq provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date, the proposed rule change has become immediately effective. In addition, the establishment of this pilot program will permit Nasdaq to monitor the operation of NASD Rule 6541 on the OTCBB, and to analyze the extent to which NASD Rule 6541 and NASD IM–2110–2 should differ.

At any time within 60 days of this filing, the Commission may summarily abrogate this proposal if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Nasdaq has stated that it would implement the new trading-ahead provisions of NASD Rule 6541(b) for a three-month period from the date that NASD Rule 6541 takes effect. Nasdaq also has stated that it would give effect to NASD Rule 6541 30 days following publication of a Notice to Members that will explain the operation of NASD Rule 6541, including the operation of the new price improvement provisions. This Notice to Members was published in July 2001 and indicates that NASD Rule 6541 will become effective on August 1, 2001, and that the price improvement provisions of NASD Rule 6541(b) will be effective until November 1, 2001.[12] The overall pilot program for Manning protection of selected OTCBB securities will be effective until February 8, 2002.

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, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2001–39 and should be submitted by August 23, 2001.

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

Margaret H. McFarland,

Deputy Secretary.

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[11] 17 CFR 240.19b–4(f)(6)

[12] *See* NASD Notice to Members 01–46.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44596; File No. SR–NYSE–00–61]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the New York Stock Exchange, Inc., Amending the Interpretation of NYSE Rule 412, ''Customer Account Transfer Contracts''

July 26, 2001.

On December 22, 2000, the New York Stock Exchange, Inc., (''NYSE'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') and on February 12, 2001, amended the proposed rule change.[1] Notice of the proposal was published in the **Federal Register** on May 22, 2001.[2] Four comment letters were received.[3] For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

NYSE Rule 412, ''Customer Account Transfer Contracts,'' prescribes procedures for member organizations transferring customer accounts and requires the use of the Automated Customer Account Transfer Service (''ACATS'') that is administered by the National Securities Clearing Corporation (''NSCC''). Since ACATS's inception in 1985, several enhancements to the system and to NYSE Rule 412 have allowed for faster and more efficient transfers of customer accounts. Recent ACATS modifications facilitate the transfer of accounts containing third party and/or proprietary products.

In the current ACATS environment, a carrying firms must deliver third party mutual funds without knowing whether the receiving firm has the capability to accept, service, and support such funds. If the receiving firm cannot support a particular fund, the delivery will be made to the receiving firms and then reversed back to the carrying firm. This results in substantial processing time by both firms and an overall delay in completing the transfer.[4]

The proposed amendments to paragraphs (b)(1)/01, /04, and /06 of the Interpretation of NYSE Rule 412, in conjunction with the corresponding recent modifications to the ACATS system, require the receiving firms to review an asset validation report provided by the carrying firms and designate those third party products (i.e., mutual funds/money market funds) it is unable to support. Regarding the third party products it is unable to support, the receiving firm will have to provide the customer with a list of the specific assets and will have to request in writing further instructions from the customer with respect to the disposition of those third party products prior to or at the time it makes such a designation. The customer would, at minimum, have to be provided with the following options: (1) Liquidation; (2) retention by the carrying organization; (3) physical delivery in the customer's name to the customer; or (4) transfer to the third party that is the original source of the product. The transfer of the other assets in the account will be undertaken simultaneously with the receiving firm's designation of nontransferable assets.

The amendments also include a notification enhancement that will expedite the disposition of nontransferable proprietary products of

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 44302 (May 14, 2001), 66 FR 28210.

[3] Letters to Jonathan G. Katz, Secretary, Commission from Richard Bommer, President, Customer Account Transfer Division, Securities Industry Association (June 6, 2001); Brian Warshaw, Director, Merrill Lynch, Pierce, Fenner & Smith (June 8, 2001); Pattie Schuchman, Associate Vice President, A.G. Edwards & Sons, Inc. (June 11, 2001); and Frederic M. Krieger, Senior Vice President, Charles Schwab & Co., Inc. (June 15, 2001).

[4] NYSE-member organizations approximate that 50% of their ACATS ''fails-to-deliver'' that are ultimately reversed are caused by the attempted transfer of mutual funds that the receiving firm is unable to support. The ACATS-generated fails result in considerable expense to carrying firms because they are required to credit the receiving firm funds equivalent to the value of the assets they are unable to deliver.

the carrying firm. The current Interpretation requires that the carrying organization provide general notification to the customer if an account to be transferred contains any nontransferable assets. The amendments require the carrying organization to provide the customer with a list of the specific nontransferable, proprietary products of the carrying firm that are in the customer's account.

Finally, the NYSE is amendment the Interpretation of Rule 412 to address situations where a carrying organization internally reassigns customer accounts to other registered representatives and establishes new account numbers. The proposed amendment places responsibility for tracking these account number changes with the carrying organization and makes clear that a transfer request rejected on the basis of such reassignment will not be considered a legitimate exception under Rule 412.

II. Comments

The Commission received four comment letters. All the commenters expressed strong support for the proposed changes to the Interpretation of Rule 412 discussed above.

III. Discussion

The Commission finds that the proposed rule change is consistent with the Act's requirements and the rules and regulations thereunder and particularly with the requirements of Section 6(b)(5) of the Act.[5] Section 6(b)(5) of the Act [6] requires that the rules of a national securities exchange be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. These obligations are met when procedures governing the transfer of customer accounts are made faster and more efficient. For example, the proposed designation requirements on the part of the receiving firm should reduce the overall timeframe for transferring proprietary and/or third party products and should lower the related costs incurred by NYSE's member organizations. The change to the Interpretation should also reduce customer confusion and facilitate decisions by customers concerning the disposition of proprietary and third party products.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NYSE–00–61) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

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[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78f(b)(5).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44595; File No. SR–NYSE–2001–15]

Self-Regulatory Organizations; Order Granting Accelerated Approval to Proposed Rule Change by the New York Stock Exchange, Inc. Amending NYSE Rules 104 and 1100 Relating to Trading of ETFs

July 26, 2001.

I. Introduction

On June 15, 2001, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'' filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change consisting of an amendment to NYSE Rule 104 to facilitate trading in Exchange Traded Funds (''ETFs''), and amendments to NYSE Rule 1100 to clarify that rules relating to Investment Company Units apply to such securities traded on the basis of unlisted trading privileges (''UTP''), and to authorize the Exchange to close trading in an ETF at 4:05 p.m. when trading in a related futures contract has closed at that time on the last trading day of the month. The proposed rule change was published for comment in the **Federal Register** on June 28, 2001.[3] The Commission received one comment on the proposal.[4] On July 26, 2001, the Exchange submitted a response to the comment letter.[5]

II. Description of the Proposed Rule Change

The Exchange plans to begin trading certain ETFs on the Exchange on a UTP basis on July 31, 2001. These ETFs are The NASDAQ 100 Trust (symbol QQQ), Standard and Poor's Depositary Receipts (symbol SPY) and the Dow Industrials DIAMONDS (symbol DIA). ETFs are securities which are defined as Investment Company Units in Section 703.16 of the Exchange's Listed Company Manual. The Exchange proposes to amend NYSE Rule 1100(a) to clarify that NYSE rules applying to Investment Company Unites also apply to securities fitting that definition that are traded on the Exchange on the basis of UTP.

NYSE Rule 104 governs specialists' dealings in Their specialty stocks. NYSE Rule 104.10 requires specialists to obtain Floor Official approval when purchasing on a direct plus tick or selling on a direct minus tick, or when purchasing on a zero plus tick more than 50% of the stock offered. These transactions are seen as destabilizing, and may be effected by the specialist only with Floor Official approval. NYSE Rule 104.10(7) was amended several years ago to permit a specialist registered in an Investment Company Unit to effect proprietary destabilizing trades without Floor Official approval to bring the security into parity with the value of the index on which the unit is based or with The net asset value of the securities comprising the unit. The purpose of that amendment was to permit a specialist registered in a ''country basket'' to act expeditiously to bring the basket into parity with the value of the securities comprising the basket.[6]

As noted above, ETFs are within the meaning of the term Investment Company Units, and thus, an ETF specialist is permitted under NYSE Rule 104.10(7) to effect proprietary destabilizing trades without Floor Official approval to bring the ETF into parity with the underlying index or the net asset value of the securities comprising the ETF. The Exchange proposes to permit specialists to effect proprietary destabilizing trades without floor official approval to bring the ETF into parity with a futures contract on the value of the index on which the Unit is

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 44465 (June 22, 2001), 66 FR 34503.

[4] *See* letter from Alton B. Harris, Ungaretti & Harris, to Jonathan G. Katz, Secretary, Commission, dated July 13, 2001.

[5] *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Nancy Sanow, Assistant Director of Market Regulation (''Division''), Commission, dated July 26, 2001.

[6] *See* Securities Exchange Act Release No. 37016 (March 22, 1996), 61 FR 14185 (March 29, 1996.)