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, by permitting managers and co-managers of secondary offerings who did not previously make a market in such issues to become PMMs in such issues prior to the effective date of the secondary offering, the Commission finds the proposed rule change will enhance market liquidity, facilitate greater competition among market makers, and promote the capital formation process. At the same time, the requirement that such firms be a PMM in 80% or more of stocks in which they are registered ensures that managers and co-managers availing themselves of this opportunity can begin making markets efficiently and effectively as soon as they become PMMs in the issue.[9] Consequently, the Commission finds that the proposal will not compromise the regulatory purposes underlying the ''Secondary Offering PMM Delay Rule.''

III. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NASD–97–30) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–16915 Filed 6–26–97; 8:45 am]

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[9] A firm is not precluded from being a manager or co-manager of a secondary offering if it is not a PMM in 80% or more of the stocks in which it makes a market.

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38757; File No. SR–NASD–97–31]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to an Amendment to the NASD's Rule Governing Market Maker Registration

June 23, 1997.

On April 24, 1997, the Nasdaq Stock Market, Inc. (''Nasdaq''), a wholly owned subsidiary of the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), filed with the Securities and Exchange Commission(''Commission'' or ''SEC'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder.[2] The rule change amends NASD Rule 4611(d) to permit managers and co-managers of an underwriting syndicate participating in a secondary offering of a security listed and traded on Nasdaq to register as a market maker in such issue on a same-day basis on the day of the secondary offering. Notice of the proposed rule change, together with the substance of the proposal, was provided by issuance of a Commission release and by publication in the **Federal Register**.[3] No comment letters were received. The Commission is approving the proposed rule change.

I. Description of Rule Change

The NASD and Nasdaq evaluated the current rules governing members registering as Nasdaq market makers by entering a registration request ''on-line'' via a Nasdaq terminal and determined, as explained below, to amend NASD rule 4611(d). As amended, Rule 4611(d) would permit managers and co-managers of an underwriting syndicate participating in a secondary offering of a security listed and traded on Nasdaq to register as a market maker in such issue on a same-day basis on the day of the secondary offering.[4]

Presently, for issues that have been trading on Nasdaq for more than five days, ''on-line'' registrations pursuant to Rule 4611(d) are not effective until the day after the registration request is made (''One-Day Delay Rule''). This one-day delay for market maker registration in non-initial public offerings is designed to minimize the potential for ''fair weather'' market making. Specifically, the one-day delay helps to assure that members registering as market makers are making a legitimate commitment of their capital to the issue for the betterment of the market, not just to capture short-term trading profits during brief periods of favorable market conditions.

Nasdaq continues to believe that the one-day delay in market maker registration serves to minimize the potential for ''fair weather'' market makers. There have been instances, however, where managers and co-managers of an underwriting syndicate for a secondary offering have been precluded from trading the issue on the day of the secondary offering because they did not submit a market maker registration request on the day before the offering. The NASD is aware of numerous instances in which this has occurred after an issuer has changed its investment bankers. When this happens, the issuer's new investment banker often erects an informational barrier between its employees who are working on the secondary offering and its employees who make markets in Nasdaq stocks. This is done to reduce the chances that insider trading, or other misuse of the information received from the issues, will occur. Consequently, the firm's employees who make markets in Nasdaq stocks, and who are responsible for completing the on-line registration, normally do not learn of the secondary offering until just prior to the announcement or effective date of the secondary offering.

Accordingly, because of the inherent commitment of managers and co-managers of underwriting syndicates to their issues, the need for these members to make a market in the stock to manage their risk, and the additional liquidity and pricing efficiency that these market makers can provide, Nasdaq believes it would be appropriate to amend NASD Rule 4611(d) to permit managers and co-managers of a secondary offering to register in that issue on a same-day basis on the day of the secondary offering.

II. Discussion

The Commission finds the proposed rule change is consistent with Section 15A(b)(6) of the Act.[5] 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, by permitting managers and co-managers of secondary offerings to become registered market makers in such issues on the day of the secondary offering, the Commission finds the

[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 38610 (May 12, 1997), 62 FR 27094 (May 16, 1997).

[4] *See* SR–NASD–97–30, Securities Exchange Act Release No. 38756 (June 23, 1997), amending NASD Rule 4612(g) to permit a member who is a manager or co-manager of a secondary offering to be eligible to become a Primary Nasdaq Market Maker (''PMM'') in that issue prior to the effective date of the secondary offering regardless of whether the member was a registered market maker in the stock before the announcement of the secondary offering.

[5] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

proposal will enhance the liquidity and stability of the market, facilitate greater market maker competition, and promote the capital formation process by enabling managers and co-managers of secondary offerings to better manage their risks associated with the offering. At the same time, given the inherent commitment of managers and co-managers to the stocks they underwrite, the Commission finds that permitting managers and co-managers of secondary offerings to register in such issues on a same-day basis on the day of the offering will not compromise the regulatory purposes underlying the ''One-Day Delay Rule.''

III. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NASD–97–31) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–16916 Filed 6–26–97; 8:45 am]

BILLING CODE 8010–01–M

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–38759; File No. SR–PTC–97–03]

Self-Regulatory Organizations; Participants Trust Company; Notice of Filing of a Proposed Rule Change Relating to a Change in the Cut-off Time for Intraday Return of Prefunding Payments

June 23, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on May 1, 1997, the Participants Trusts Company (''PTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–PTC–97–03) as described in Items I, II, and III below, which items have been prepared primarily by PTC. 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 proposed rule change extends from 11:00 a.m. to 1:00 p.m. the cut-off time for a participant to request that PTC return to them intraday their prefunding payments made to PTC earlier in the day.

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

In its filing with the Commission, PTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on 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. PTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(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 extend from 11:00 a.m. to 1:00 p.m. the cut-off time for a participant to request that PTC return to them intraday a portion of their prefunding payments made to PTC earlier in the day. Only prefunding payments which are no longer needed to support transaction processing are eligible for intraday return.

In August 1996, PTC amended Article V, Rule 2, Section 5 of its rules to permit the intraday return of prefunding payments.[3] Before the rule change, PTC's rule required that prefunding payments be applied to end-of-day settlement or be made available for withdrawal on the next business day or thereafter.

On September 9, 1996, PTC implemented the intraday return of prefunding as a pilot program (''Program''). The procedures established for the Program included, among other things,[4] that only prefunding payments received by PTC between 8:30 a.m. and 11:00 a.m. were eligible for early return and that PTC expected to make all returns between 11:00 a.m. and 12:00 p.m. These initial procedures were incorporated in PTC's Participant Operating Guide.

When the Commission approved the Program, the Commission's order noted, ''Upon implementation of the [P]rogram, PTC plans to evaluate the initial procedures on a quarterly basis and will make changes based on such procedures as necessary based upon PTC's experience with the [P]rogram. PTC will be required to file with the Commission a proposed rule change prior to any change or modification of the initial procedures.'' [5]

In developing the Program, PTC expected that participants would be able to determine their excess prefunding amounts by 11:00 a.m. in order to request a return by that time. PTC has monitored prefunding payments during the period in which the Program has been in place and has observed that participants with excess cash which could be withdrawn by 11:00 a.m. have elected not to do so. In discussions with PTC, participants have stated that they are reluctant to withdraw excess cash at 11:00 a.m. due to the risk of potential credit fails at PTC thereafter in the event that their day's processing is not substantially complete by this time. Participants have advised PTC that they are better able to assess their cash positions at PTC by approximately 1:00 p.m. when processing activity is generally substantially completed.

PTC believes that the return of prefunding payments that are no longer needed to support transaction processing at PTC may enhance participants' liquidity during the day, which enhancement can be extremely beneficial in a same-day funds environment. By extending the request deadline from 11:00 a.m. to 1:00 p.m., participants should be able to determine better whether prefunding payments on deposit with PTC are still required to support transactions processing at PTC are still required to support transactions processing at PTC or whether they are of greater economic benefit being withdrawn. As a result of the 1:00 p.m. cutoff time, PTC anticipates that the returns of such funds would occur between 1:00 p.m. and 1:45 p.m.[6]

PTC believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act [7] and the rules and regulations thereunder in that it will facilitate the prompt and accurate clearance and settlement of securities transactions.

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

[2] The Commission has modified the text of the summaries prepared by PTC.

[3] Securities Exchange Act Release No. 37515 (August 2, 1996), 61 FR 41677.

[4] The Program's procedures also included the following: (1) all prefunding return transactions are subject to PTC's standard credit checks (*i.e.*, prefunding may be returned only if the participant will be within its Net Free Equity and Net Debit Monitoring Level requirements after the prefunding in returned); (2) during the initial stage of the pilot program, only 80% of qualifying prefunding payments will be eligible for return; (3) participants are allowed only one request per day; and (4) the minimum amount eligible for return is $10 million.

[5] *Supra* note 3, at n. 4.

[6] The proposed rule change will not amend the Program's other procedures. *See supra* note 4.

[7] 15 U.S.C. 78q–1(b)(3)(F).