

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44623; File No. SR-NASD-2001-47]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Audit Trail and Trading Halt Requirements for Alternative Trading Systems That Trade Security Futures

July 30, 2001.

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 July 30, 2001, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), 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 for interested persons.

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

NASD Regulation is proposing to add NASD Rule 3115 and to amend NASD Rule 3340 to establish record-keeping requirements for Alternative Trading Systems ("ATs") that trade security futures, and to require ATs to coordinate trading halts with markets trading the underlying securities and markets trading related securities. Below is the text of the proposed rule change.

Proposed new language is in *italics*; proposed deletions are in [brackets].

Rule 3115. Requirements for Alternative Trading Systems to Record and Transmit Order and Execution Information for Security Futures

(a) Alternative Trading Systems' Recording Requirements

(1) Each alternative trading system that accepts orders for security futures (as defined in section 3(a)(55) of the Act) shall record each item of information described in paragraph (b) of this Rule. For purposes of this Rule, the term "order" includes a broker/dealer's proprietary quotes that are transmitted to an alternative trading system.

(2) Alternative trading systems shall record each item of information required to be recorded under this Rule in such form as is prescribed by the Association from time to time.

(3) Maintaining and Preserving Records

(A) Each alternative trading system shall maintain and preserve records of the information required to be recorded under this Rule for the period of time and accessibility specified in SEC Rule 17a-4(b).

(B) The records required to be maintained and preserved under this Rule may be immediately produced or reproduced on "micrographic media" as defined in SEC Rule 17a-4(f)(1)(i) or by means of "electronic storage media" as defined in SEC Rule 17a-4(f)(1)(ii) that meet the conditions set forth in SEC Rule 17a-4(f) and may be maintained and preserved for the required time in that form.

(b) Information to be Recorded. The records required pursuant to paragraph (a) of this Rule shall contain, at a minimum, the following information for every order:

(1) Date and time (expressed in terms of hours, minutes, and seconds) that the order was received;

(2) Security future product name and symbol;

(3) Number of share to which the order applies;

(4) An identification of the order as related to a program trade or an index arbitrage trade as defined in New York Stock Exchange Rule 80A;

(5) the designation of the order as a buy or sell order;

(6) The designation of the order as a market order, limit order, stop order, stop limit order, or other type of order;

(7) Any limit or stop price prescribed by the order;

(8) The date on which the order expires and, if the time in force is less than one day, the time when the order expires;

(9) The time limit during which the order is in force;

(10) Any instructions to modify or cancel the order;

(11) Date and time (expressed in terms of hours, minutes, and seconds) that the order was executed;

(12) Unit price at which the order was executed; excluding commissions, mark-ups or mark-downs;

(13) Size of the order executed; and

(14) Identity of the alternative trading system's subscribers that were intermediaries or parties in the transaction.

(c) Reporting Requirements

(1) General Requirement

Alternative trading systems shall report information required to be

recorded under this Rule to the Association on the next business day following the date the alternative trading system accepted the order or executed the trade, or at such other time period as the Association shall specify.

(2) Method of Transmitting Data

Alternative trading systems shall transmit this information in such form as prescribed by the Association.

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3340. Prohibition on Transactions, Publication of Quotations, or Publication of Indications of Interest During Trading Halts³

(a) No member of person associated with a member shall, directly or indirectly, effect any transaction or publish a quotation, a priced bid and/or offer, an unpriced indication of interest (including "bid wanted" and "offer wanted" and name only indications), or a bid or offer, accompanied by a modifier to reflect unsolicited customer interest, in any security as to which a trading halt is currently in effect.

(b) No member or person associated with a member shall, directly or indirectly, effect any transaction or publish a quotation, a priced bid and/or offer, an unpriced indication of interest (including "bid wanted" and "offer wanted" and name only indications), or a bid or offer, accompanied by a modifier to reflect unsolicited customer interest, in:

(1) a future for a single security when the underlying security has a regulatory trading halt that is currently in effect; and

(2) a future on a narrow based securities index when one or more underlying securities that constitute 30% or more of the market capitalization of the index has a regulatory trading halt that is currently in effect.

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

³ The text of NASD Rule 3340 includes the recently approved changes to this rule that prohibit members from publishing quotations or indications of interest in a security during a trading halt. The Commission approved this rule change on June 5, 2001. See Securities Exchange Act Release No. 44390, 66 FR 31262 (June 11, 2001). The rule change becomes effective on August 13, 2001. See NASD Notice to Members 01-47.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 NASD is proposing a rule change to establish requirements relating to ATSs for the trading of futures on single securities and narrow-based security indices. The Commodity Futures Modernization Act of 2000⁴ ("CFMA") ends the nearly 20-year ban on single stock futures and futures on narrow-based stock indices and puts in place a new framework of regulations that will allow both broker/dealers and futures commission merchants ("FCMs") the ability to trade these instruments.

The CFMA defines a "security future" as a contract of sale for future delivery of a single security or of a narrow-based security index. Under the CFMA, security futures are defined as "securities" under the Act, thus making the federal securities laws generally applicable to them. The CFMA also specifies the requirements that both securities exchanges and futures contract markets must satisfy in order to list and trade security futures. Under this new regime, broker/dealers that wish to effect transactions in security futures are required to register with the Commodity Futures Trading Commission ("CFTC") by filing a written notice with the CFTC.⁵ Likewise, FCMs and other intermediaries registered with the CFTC that wish to effect transactions in security futures are required to notice register with the SEC.

As discussed below, the NASD's proposed rule change will establish requirements for ATSs that will trade security futures. In the coming months, NASD Regulation intends to file with the SEC a second proposed rule change that will address several additional issues raised by the introduction of security futures trading in the United States.

a. *Requirements for Alternative Trading Systems.* The CFMA requires the NASD, as a national securities association, to meet several requirements with respect to preparing for the trading of security futures by ATSs.⁶ Specifically, the CFMA requires the NASD to have rules in place that require ATSs to: (1) Have audit trails necessary to facilitate coordinated surveillance; and (2) coordinate trading halts with markets trading the underlying securities and markets trading related securities.⁷

Accordingly, with respect to audit trails, the proposed rule change would require ATSs to record and report audit trail information on a T+1 basis in such form as NASD Regulation requires. NASD Regulation has based the required elements of the audit trail rule on the existing recordkeeping rule for ATSs, Regulation ATS Rule 302.⁸ The form of the reports will be designed to facilitate NASD Regulation's sharing the reports with members of the Intermarket Surveillance Group, an organization whose purpose is to coordinate surveillance among financial markets. The proposed rule change would require that ATSs preserve such records in accordance with Rule 17a-4(b) under the Act,⁹ which requires preservation of records for at least three years, the first two years in an accessible place.

b. *Amendments to NASD Rule 3340.* With respect to coordinated trading halts, the proposed rule change would amend the NASD's existing rule prohibiting trading during a halt. Currently, NASD Rule 3340 broadly prohibits broker/dealers and associated persons from effecting a "transaction * * * in any security as to which a trading halt is currently in effect." NASD Regulation proposes to amend this rule by adding a provision that prohibits member firms, including ATSs, from trading, publishing quotes or indications of interest for: (a) A future on a single stock when the underlying stock is subject to regulatory trading halt, and (b) a future on a narrow based securities index when one or more underlying securities that constitute 30 percent or more of the market capitalization of the index are subject to a regulatory trading halt. Further, by

limiting application of new NASD Rule 3340(b) to regulatory trading halts, NASD Regulation intends to exclude halts resulting from events such as an order imbalance or a systems failure.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,¹⁰ which requires, among other things, that the Association's rule 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 further believes that the proposed rule change is consistent with the requirements of the CFMA.¹¹ The CFMA requires a national securities association, such as NASD, to adopt rules to require ATSs to provide "audit trails necessary or appropriate to facilitate" coordinated surveillance among ATSs, the market trading the securities underlying the security future products, and other markets trading related securities in order to detect manipulation and insider trading, and to require ATSs "to coordinate trading halts with markets trading the securities underlying the security future products and other markets trading related securities."¹² These provisions of the CFMA are the basis for the proposed new audit trail rule for ATSs and the proposed amendment to the NASD's trading halt rule.

(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.

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

Written comment were neither solicited nor received.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or

⁴ The CFMA was signed into law on December 21, 2000. Pub. L. 106-554, 114 Stat. 2763 (2000).

⁵ When a broker/dealer files its written notice, the CFTC is to give immediate effectiveness to the registration if: (1) The broker/dealer is a member of a national securities association, such as the NASD; (2) it limits its futures business to security futures products; and, (3) it has not had its registration as a broker or dealer suspended by the SEC. See Section 4f(a)(2) of the Commodity Exchange Act; 7 U.S.C. 6f(a)(2).

⁶ ATSs generally are systems that maintain a marketplace for bringing together purchasers and sellers of securities or otherwise perform the functions commonly performed by a securities exchange and do not perform self-regulatory functions. See Regulation ATS Rule 300(a), 17 CFR 242.300(a); Securities Exchange Act Release No. 40760 (Dec. 8, 1998), 63 FR 70844 (Dec. 22, 1998).

⁷ See 15 U.S.C. 78f(h)(5).

⁸ 17 CFR 242.302(c).

⁹ 17 CFR 240.17a-4(b).

¹⁰ 15 U.S.C. 78o-3(b)(6).

¹¹ See note 4, *supra*.

¹² See 15 U.S.C. 78f(h)(5).

(ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

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 the SR-NASD-2001-47 and should be submitted by August 21, 2001.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01-19580 Filed 8-3-01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44617; File No. SR-NSCC-2001-06]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Revising Fees

July 30, 2001.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on April 25, 2001, NSCC filed with the Securities and Exchange Commission ("Commission") the proposed rule

change as described in Items I, II, and III below, which Items have been prepared by NSCC. 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 revises NSCC's fee schedule by reducing certain fees and giving NSCC the benefit of the fee reduction retroactive to January 1, 2001.

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

In its filing with the Commission, NSCC 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. Set forth in sections A, B, and C below, are the most significant aspects of such statements.

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

The purpose of the proposed rule filing is to reduce certain fees and to give NSCC's members the benefit of these fee changes retroactive to January 1, 2001. The revised fees will be reflected in each member's billing statements transmitted in May 2001.

The Trade Recording fee for each side of each stock, warrant, or right item entered for settlement but not compared by NSCC is currently \$.005 per 100 shares with a minimum fee of \$.020 and a maximum fee of \$.30. Under this rule change, this fee will be reduced to \$.004 per 100 shares with a minimum fee of \$.016 and a maximum of \$.24.

The Trade Clearance fee for trade clearance (netting) is currently \$.025 per side. Under this rule change, the fee will be reduced to \$.02 per side.

The CNS Delivery Order Movement fee of \$.06 per item will be eliminated. This charge was a pass through charge from The Depository Trust Company ("DTC"). It will be billed directly by DTC effective May 1, 2001.

The Fund/SERV transaction fee is currently \$.25 per side per order or transfer request. Under this rule change, the fee will be reduced to \$.175 per side per order or transfer request.

NSCC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder since it

provides for the equitable allocation of dues, fees, and other charges among NSCC's participants.

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

NSCC does not believe that the proposed rule change will impact or impose a burden on competition.

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

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(a) of the Act and Rule 19b-4(f)(2) thereunder because the proposed rule change reduces fees and other charges. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change 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.

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 submission 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 Commission, and all written communications relating to the proposed rule change that are filed with Commission, and all written communications related to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at NSCC's principal office. All submissions should refer to File No. SR-NSCC-2001-06 and

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).