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Since its implementation, ACT has functioned as an effective and efficient vehicle to compress the trade comparison cycle thereby facilitating the prompt and accurate clearance and settlement of securities transactions and enabling NASD members to know their positions and market exposure before trading commences the next day. As a facility of the Nasdaq Stock Market operated by the Nasdaq Stock Market, Inc. ("NSMI") subsidiary of the NASD, access to the ACT system is limited to NASD members.

Providing West Canada access to ACT has been structured so that the primary parties to the arrangement are West Canada and NSMI, the NASD subsidiary that owns and operates ACT. Rather than negotiating separate contracts with each individual organization, the NASD believes that it is more efficient for NSMI to negotiate with the exchange, market, or clearing entity to which the non-NASD member belongs, in this case West Canada. Accordingly, under the rule change, West Canada operates as a service bureau to input information into ACT on behalf of West Canada members. Individual West Canada members will not be able to obtain access to ACT unless there is first an overriding, umbrella-type agreement reached between NSMI and West Canada. Thus, whenever NASD members transact with West Canada members in ACT eligible securities, they will be able to use ACT just as they do now for comparing regular-way trades with other NASD members.

Under the rule change a nonmember clearing organization will not be given access to ACT unless it: (1) Is a clearing agency registered under the Act; (2) maintains membership in a registered clearing agency; or (3) maintains an effective clearing arrangement with a registered clearing agency. West Canada has an effective clearing arrangement with the Midwest Clearing Corporation ("MCC") and thus satisfies this requirement.<sup>7</sup> New section (b)(5)(B) of

<sup>7</sup> In January 1983, MCC, Midwest Securities Trust Company ("MSTC"), the Vancouver Stock Exchange, and the Vancouver Stock Exchange Service Corporation ("VSESC"), (now known as West Canada Clearing Corporation ["WCCC"]) ("VSESC/WCCC") created the American and Canadian Connection for Efficient Securities Settlements ("ACCESS"). Through ACCESS, overthe-counter securities transactions between the U.S. and Canadian broker-dealers in both U.S. and Canadian securities are compared, cleared, and settled. Trades between U.S. and Canadian brokerdealers involving securities listed on U.S. securities exchanges, Canadian securities exchanges, or the

the ACT Rules provides that West Canada must execute a Non-member Clearing Organization ACT Participant Application Agreement. This agreement requires West Canada to abide by the ACT rules and regulations and will ensure that West Canada members trades processed through ACT will be accepted for clearance and settlement by West Canada. The agreement also addresses NSMI concerns over nonpayment of service charges, the financial exposure and liabilities of the parties, and methods of redress should West Canada or a West Canada member fail to comply with the relevant NASD rules and regulations. In addition, new Section (b)(5)(B)(6) of the ACT Rules provides that West Canada will not be able to input information into ACT on behalf of a West Canada member unless such member also enters into a Non-Member ACT Access Participant Application Agreement with NSMI. In the case of a clearing broker, this agreement provides that the member will accept and will settle each trade that ACT identifies as having been effected by such member of any of its correspondents on the regularly scheduled settlement date. In the case of an order entry firm, the firm must agree to accept and settle each trade that it has effected or, if settlement is to be made through a clearing member, guarantee the acceptance and settlement of each ACT-identified trade by the clearing member on the regularly scheduled settlement date.

Separately, the proposal also amends the ACT Rules to expand the term "Participant" to include NASD member firms that function as market makers in over-the-counter ("OTC") equity securities that are eligible for clearing via the National Securities Clearing Corporation's ("NSCC") facilities.<sup>8</sup> The

<sup>8</sup> Securities Exchange Act Release No. 30415 (February 26, 1992), 57 FR 7829 [File No. SR– instant modification will clarify that ACT participant status encompasses NASD members that function as market makers in such securities via the OTC Bulletin Board service or another interdealer quotation system.<sup>9</sup>

## B. Comments

The Commission received sixteen comment letters supporting approval of the filing.<sup>10</sup> The commenters believe that allowing West Canada and its participants to submit trade input to ACT for comparison will improve the timeliness of trade confirmation which is essential to meeting the June 7, 1995 three business day settlement cycle.<sup>11</sup>

## **II. Discussion**

The rule change stems from a request from West Canada to NASD for access to ACT for trade comparison purposes only.12 Prior to this rule change, when an NASD member effected a transaction with a West Canada member, the transaction typically was compared, cleared, and settled in the following manner. The NASD member entered the trade into ACT with the West Canada member designated as the contra-party. Because the West Canada member was not an ACT participant, ACT responded to the NASD member "contra-side not ready." ACT then reported the trade for trade reporting purposes and transmitted the trade to NSCC as a oneside trade for trade comparison. The West Canada member submitted the trade information to West Canada that in turn sent the trade to MCC. MCC then transmitted the trade report to NSCC by 2:00 a.m. on T+1 for comparison. NSCC then compared the trade reports, and assuming there was a match, NSCC submitted the West Canada member's side of the transaction to MCC for clearance and settlement; the NASD

<sup>9</sup> Under Schedule D to the NASD By-Laws, Part XII, Section 1(d) defines "OTC Market Maker" to mean any NASD member that holds itself out as being a market maker in any OTC Equity Security by entering proprietary quotations or indications of interest in an inter-dealer quotation system.

<sup>11</sup> On October 6, 1993, the Commission adopted Rule 15c6–1 under the Act, which establishes three business days after the trade date instead of five business days as the standard settlement time frame for most broker-dealer transactions. Securities Exchange Act Release No. 33023 (October 6, 1993), 58 FR 52891 (release adopting Rule 15c6–1). On November 16, 1994, the Commission changed the effective date of Rule 15c6–1 from June 1, 1995, to June 7, 1995. Securities Exchange Act Release No. 34952 (November 9, 1994), 59 FR 59137.

<sup>12</sup> The present filing solely addresses the access of West Canada to ACT. Other proposals concerning nonmember access to ACT, if any, will be raised in separate rule filings submitted pursuant to Section 19 of this Act.

event less than \$1 million that provides clearing firms with a 15 minute review period prior to becoming obligated to clear a trade of \$200,000 or more executed by one of its correspondents once the limit is surpassed.

National Association of Securities Dealers Automated Quotation ("NASDAQ") System are eligible for clearance and settlement through ACCESS. To establish ACCESS, VSESC/WCCC became an MCC/MSTC participant, and opened separate sponsored MCC/MSTC accounts for Canadian broker-dealers that were participants of VSESC. As an MCC/MSTC member, VSESC/WCCC is liable as principal (i.e., guarantees) all trades that it submits including all trades in its sponsored accounts. Some safeguards on ACCESS activity include, contributions by VSESC/WCCC to MCC/ MSTC's participant fund based on VSESC/WCCC's total activity, and a cash reserve of over 250,000 Canadian dollars maintained by VSESC/WCCC to be used to satisfy the obligations of any VSESC/ WCCC participant that may become insolvent. In addition, VSE guarantees all VSESC/WCCC liabilities to MCC/MSTC. Letter from Jonathan Kallman, Assistant Director, Division of Market Regulation, Commission, to Michael Wise, Associate Counsel, MCC/MSTC (September 12, 1985)

NASD-92-5] (order approving OTC Equity Securities as ACT eligible securities).

<sup>10</sup> Supra note 3.