

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.²

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

In 1992, the NASD approved an amendment to the ACT Rules to permit certain non member clearing organizations and their member broker/dealers to have access to and participate in ACT.³ The rule change was adopted with the West Canada Clearing Corporation ("WCCC") in mind, and WCCC was the first non member clearing organization to be granted access to and participation in ACT.⁴

In granting access and participation to non member clearing organizations, however, the NASD was concerned about its ability to regulate individual non member broker/dealers that enter into transactions with NASD member. Accordingly, the NASD determined to permit non member participation only for those organizations that would guarantee the trades submitted by their members. The amendments to the ACT Rules allowing non member clearing organizations access to and participation in ACT and specifically approving WCCC participation were

approved by the Commission on April 19, 1995.⁵

The NASD has received another request through the International Securities Clearing Corporation to allow member broker/dealers of CDS to participate in ACT. After reviewing the financial status of CDS, the NASD believes CDS is in a financial position to guarantee the performance of its members. In addition, CDS is a member of the National Securities Clearing Corporation ("NSCC") and a Special Representative under NSCC's rules.⁶ Furthermore, CDS members submit trade data through NSCC's Correspondent Clearing Service⁷ as required by ACT Rules.⁸

The NASD believes that permitting CDS broker/dealer members to participate in ACT will expand the universe of Canadian brokers executing trades with NASD members in the U.S. and will facilitate comparison of trades executed by members of CDS in the T+3 settlement cycle.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act⁹ which require that the rules of the NASD be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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. The NASD believes the rule change is consistent with the Act because the rule change will permit CDS broker/dealer members to participate in ACT under an agreement by CDS to guarantee its member transactions. It will expand the universe of Canadian brokers executing trades with NASD members in the U.S.,

and it will facilitate the comparison of trades executed by members of CDS in the T+3 settlement cycle.

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

The NASD 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 comments were neither solicited nor received.

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

Within thirty five 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 ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 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 in the Commission's Public Reference Section. 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-95-49 and should be submitted by January 2, 1996.

² The Commission has modified the text of the summaries prepared by the NASD.

³ Generally, ACT facilitates comparison and clearing of interdealer over-the-counter equity trades by requiring input of trade details within specific time frames, comparing the trade details, and submitting matched, locked-in trades for clearing. For a complete description of ACT, refer to Securities Exchange Act Release Nos. 27229 (September 8, 1989), 54 FR 38484 [File No. SR-NASD-89-25] (order partially approving proposed rule change to permit ACT to be used by self-clearing firms) and 28583 (October 26, 1990), 55 FR 46120 [File No. SR-NASD-89-25] (order approving remainder of File SR-NASD-89-25 to permit ACT to be used by introducing and correspondent broker-dealers).

⁴ The NASD granted access and participation to WCCC in part because it submits its transaction data to the Midwest Clearing Corporation ("MCC") through an end-of-day processing transmittal that is part of the regional interface between the clearing corporations. WCCC also demonstrated sufficient financial strength to support the trade guarantee made on behalf of its members.

⁵ Securities Exchange Act Release No. 35625 (April 19, 1995), 60 FR 20785 [File No. SR-NASD-94-55] (order approving proposed rule change relating to the access of WCCC and its members to ACT).

⁶ Generally, a Special Representative is a member or a registered clearing agency that has been authorized by one or more other persons to act on their behalf at NSCC. For a complete description of Special Representative, refer to NSCC Rule 39, "Special Representative/Index Receipt Agent."

⁷ Under the correspondent clearing service, NSCC members functioning as Special Representatives (e.g., CDS) submit transaction data on behalf of correspondents, which are NSCC members or non members of NSCC that are members of an interfaced clearing organization (e.g., CDS member). For a complete description of NSCC's Correspondent Clearing Service, refer to NSCC Procedure IV., C.

⁸ ACT Rules require that a nonmember clearing organization 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.

⁹ 15 U.S.C. 78o-3(b)(6) (1994).