

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-56677; File No. SR-FINRA-2007-005)

October 19, 2007

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Granting Approval of a Proposed Rule Change Relating to NASD Rule 11870 (Customer Account Transfer Contracts) and NYSE Rule 412 (Customer Account Transfer Contracts) to Make the Time Frames in the Rules for Validating or Taking Exception to an Instruction to Transfer a Customer's Securities Account Consistent with the Time Frames in the Automated Customer Account Transfer Service

I. Introduction

On August 8, 2007, Financial Industry Regulatory Authority, Inc. ("FINRA") 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").¹ Notice of the proposal was published in the Federal Register on September 13, 2007.² The Commission received four comment letters in response to the proposed rule change.³ For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description

FINRA is amending National Association of Securities Dealers, Inc. ("NASD") Rule 11870 ("Customer Account Transfer Contracts") and New York Stock Exchange ("NYSE") Rule 412 ("Customer Account Transfer Contracts") to make the time frames in the rules for validating or taking exception to an instruction to transfer a customer's securities account assets and for completing the transfer of the assets consistent with the time frames in the National Securities

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 56373 (September 7, 2007), 72 FR 52414.

³ Deirdre B. Koerick, Chief Compliance Officer, Lincoln Investment Planning, Inc. (October 2, 2007); Ron Marino, President, Customer Account Transfer Division, Securities Industry and Financial Markets Association (October 4, 2007); Kristie Thompson, Group Leader, Customer Account Transfer, Edward D. Jones & Co., LP (October 5, 2007); and R. Clements (October 17, 2007).

Clearing Corporation's ("NSCC") Automated Customer Account Transfer Service ("ACATS") transfer cycle.⁴

NASD Rule 11870 and NYSE Rule 412 regulate the transfer of customer accounts from one member ("carrying firm") to another ("receiving firm"). Such transfers generally occur through ACATS, an electronic transfer system developed by NSCC to automate and standardize the transfer of accounts. Currently, NASD Rule 11870(b) and NYSE Rule 412(b)(1) require carrying members to validate or to take exception to an instruction to transfer securities account assets within three business days following receipt of a Transfer Initiation Form ("TIF") or transfer instruction. NASD Rule 11870(e) and NYSE Rule 412(b)(3) require carrying members to complete the transfer within three business days following the validation of a transfer instruction.

FINRA is amending NASD Rule 11870(b) and (e) and NYSE Rule 412(b)(1) and (b)(3) to reduce the validation period from three business days to one business day and to provide that the time frames in NASD Rule 11870(b) and (e) and NYSE Rule 412(b)(1) and (b)(3) will change if and when NSCC modifies those requirements in the future.⁵ FINRA will also announce any such future changes in time frames to its members in a Regulatory Notice and other appropriate communications.

⁴ In a companion rule filing, NSCC is eliminating two business days from the validation period for both full and partial transfers. Securities Exchange Act Release No. 56678 (October 19, 2007) (order approving proposed rule change) [File No. SR-NSCC-2007-13].

⁵ Should FINRA need to change the time frames because of a change in NSCC Rules, FINRA will file a proposed rule change to make such change.

III. Comment Letters

The Commission received four comment letters in response to the proposed rule change.⁶ Two of the comment letters supported the proposed rule change and one comment letter, while not specifically opposing the proposed change, did not believe that the proposed changes would alone be sufficient to reduce delays in the account transfer process. A fourth comment letter supported the proposed rule change while also suggesting that further action be taken to reduce other delays in the account transfer process.

Two of the supporting comment letters, written on behalf of the Customer Account Transfer Division of the Securities Industry and Financial Markets Association (“SIFMA”) and Edward D Jones & Co., LP (“Edward Jones”) both expressed the belief that the proposed reduction to the account transfer time frame by two business days will significantly improve the experience of investors when transferring assets. The SIFMA letter also addressed the concerns reported by FINRA of some introducing brokers to the proposed rule change. SIFMA expressed its view that based on its experience working with members of the Customer Account Transfer Division on the proposed changes to ACATS, the changes would not result in hardship of any one group of clients or member firms.

The comment letter written on behalf of Lincoln Investment Planning, Inc. expressed doubt that reducing the validation period alone will alleviate delays in the transfer of securities. Rather, the commenter states that such a reduction should be accompanied by specific time frames by which customers are informed by their receiving firms of exceptions taken in the transfer process so that such exceptions can be rectified consistent with firms’ obligation to

⁶ Supra note 3.

“promptly” resolve any exceptions.⁷ The comment letter from R. Clements expressed support for the reduced account transfer time frame but also suggests that further action be taken to reduce the amount of time for delivering firms to transfer proceeds from sales of account assets that are liquidated rather than transferred through ACATS.

IV. Discussion

Section 15A(b)(6) of the Act⁸ requires, among other things, that FINRA rules must be designed 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. The proposed rule change is designed to accomplish these ends by making the time frames in NASD Rule 11870(b) and (e) and NYSE Rule 412(b)(1) and (b)(3) consistent with the time frames established by NSCC for validating or taking exception to an account transfer instruction and for completing the transfer thereby creating greater efficiency in the securities account transfer process. The rule change, therefore, takes an important step to improving the account transfer process.

V. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 15A of the Act and the rules and regulations thereunder.⁹

⁷ See NASD Rule 11870(b)(2) and NYSE Rule 412(b)(2).

⁸ 15 U.S.C. 78o-3(b)(6).

⁹ In approving the proposed rule change, the Commission considered the proposal’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-FINRA-2007-005) be and hereby is approved.

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

Florence E. Harmon
Deputy Secretary

¹⁰ 17 CFR 200.30-3(a)(12).