

proposed rule change (SR-NASD-00-64), be and hereby is approved.

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

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43699; File No. SR-NSCC-00-10]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Certain Securities Undergoing Reorganization

December 11, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on October 10, 2000, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily 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 would modify NSCC's procedures to permit the processing of securities subject to certain voluntary corporate action in NSCC's continuous net settlement ("CNS") system.

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. NSCC 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 filing is to modify NSCC's Rules and Procedures to permit securities that are subject to certain voluntary corporate action which would normally cause them to be exited from NSCC's CNS system to continue to be processed in CNS.³ From time to time a security may become subject to an offer that has a feature which would normally require it to be exited from CNS. Consistent with the industry's goal to increase automated transaction processing, NSCC has been working to enhance the CNS system to enable it to process securities with reorganization events that have a wider and more varied range of features. The proposed rule change would provide that when NSCC determines that it has the operational capability to continue to process such an issue, the issue would continue to be CNS eligible, and NSCC would establish procedures necessary for NSCC to accommodate the issue in CNS. NSCC would issue an Important Notice to its members detailing how the security would be processed.

NSCC's Rules and Procedures permit NSCC to continue to process certain securities undergoing corporate reorganizations and specify how NSCC shall handle those issues. For example, currently NSCC's Procedure VII provides for the processing in CNS of securities subject to tender offers with protect periods of three or more days. Securities subject to tender offers with protect periods of less than three days cannot currently be processed in CNS, and NSCC would normally exit such securities from the CNS system. In that case, NSCC would issue receive/deliver instructions to participants with long or short positions in the subject security. The proposed rule change would allow securities subject to tender offers with no protect periods or protect periods of less than three days to be processed in CNS.

Another example, would be issues subject to multiple tender offers. Currently, NSCC's Rules and Procedures provide for the establishment of up to two CNS reorganization subaccounts for issues subject to two tender offers. Under NSCC's proposal, it could, provided it has the operation capability to do so, establish multiple CNS

subaccounts for issues subject to multiple tender offers.

In addition, in order to eliminate the possibility of error which arises from manual processing, NSCC has determined not to continue providing certain features which were processed on a manual basis. For example, the rule would no longer permit new input on the last day of the protect period.

NSCC intends to implement these changes, subject to SEC approval, on or about February 9, 2001.

NSCC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder. In particular, NSCC believes that because the proposed rule change would allow additional corporate actions to be processed in a CNS environment, it would facilitate the prompt and accurate clearance and settlement of such securities transactions.

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

NSCC does not believe that the proposed rule change will have an impact on 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. However, NSCC has worked closely with the Securities Industry Association's Corporate Action division in developing the proposed CNS modifications, and they concur with the proposed changes. 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

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 NSCC consents, the Commission will:

- By order approve the proposed rule change or
- 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

¹³ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² The Commission has modified parts of these statements.

³ As a part of its filing, NSCC is proposing to modify its Rules and Procedures to refer to reorganization events as voluntary and mandatory instead of as voluntary and involuntary.

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, N.W., Washington, D.C. 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 Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR-NSCC-00-10 and should be submitted by January 8, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁴

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43689; File No. SR-NYSE-98-25]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Creation of a Floor Audit Trail

December 7, 2000.

I. Introduction

On August 4, 1998, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4² thereunder, a proposed rule change. In its proposal, the NYSE seeks to adopt new provisions in NYSE Rule 123, to provide for the capturing of details of an order systemically on the Floor of the Exchange. The proposed provisions require that the details of all orders be recorded in an electronic

system prior to being represented or executed on the Floor. On December 21, 1998, and June 8, 1999, respectively, the Exchange filed Amendment Nos. 1 and 2 to the proposed rule change.³ The proposed rule change, including Amendment Nos. 1 and 2, was published for comment in the **Federal Register** on August 12, 1999.⁴ The Commission received no comments on the proposed rule change and this order approves it.

II. Description of the Proposal

The Exchange has proposed a series of initiatives to strengthen the regulation of activities of members on the Floor. In this filing, the Exchange proposes to adopt new provisions in NYSE Rule 123 for recording the details of an order, as well as any modification or cancellation of such order, in an electronic system prior to representing or executing an order on the Floor.

The proposed amendment to NYSE Rule 123 defines an order as any written, oral or electronic instruction to effect a transaction. Paragraph (e) of the proposed rule requires that, prior to being represented, an order, including any changes in its terms and any cancellations, must be entered into an electronic system that records the order details and records the time the order details were entered into the system and the time of any modification or cancellation. Nevertheless, the proposed rule excludes transactions initiated on the Floor and executed by a registered competitive market maker, a competitive trader or a specialist for their own account, as such trades may be initiated on the Floor and are already reported to the Exchange. In addition, the proposed rule provides that members may use either a proprietary or an Exchange system to comply with the rule, and if a proprietary system is used, order details must be sent to a designated NYSE database.

The proposal requires that, other than as noted above, before representing or executing an order on the Floor, a member, whether acting as agent for another member on the Floor or otherwise, is obligated to make sure that the details of such order have been entered in an electronic system in accordance with the requirements of the rule. The Exchange represents that the

details of the order may be entered into the system by an individual or organization other than the member who is representing or executing the order, but if this were to occur, the member with the order could not represent or execute the order until the details of the order were recorded in an electronic system.

According to the NYSE, this proposed rule change does not replace existing requirements for recording orders contained in Exchange or Commission rules. For example, NYSE Rule 123, under the heading "Receipt of Orders," requires each member to preserve for three years a record of every order received by that member on the Floor from off the Floor, including the time when such order was received. NYSE Rule 410 requires each member or member organization to preserve for three years a record of every order transmitted to the Floor or received and carried to the Floor by such member or member organization, including the name and amount of security, the terms of the order, the time it was transmitted or received, and the time an execution report was received.

The proposal requires that members enter the following order details: symbol; clearing member organization; order identifier (as assigned by the member or member organization recording the order details)⁵ that uniquely identifies the order; identification of member or member organization recording order details; quantity; side of market (e.g., buy, sell long, sell short, sell short exempt); designation as market, limit, stop or stop limit; limit price, stop price and stop limit price (if applicable); time in force (e.g., day, GTC, GTX);⁶ designation as held or not held,⁷ special conditions (e.g., Rule 10b-18, "G" order and any request by a customer that an order not be displayed); and, a system-generated timestamp. The proposed rule would also require the systematic entry of such other details as the Exchange may require from time to time.

Along with this rule change, the Exchange proposes to design a database

⁵ According to the Exchange, its Broker Booth Support System ("BBSS") automatically assigns a unique order identifier to the order, but a member or member organization can choose instead to override this feature and assign its own unique identifier.

⁶ The Exchange represents that an order designated as good until a specific time will be recorded in a separate memo field (rather than in the time in force field) as a special condition or special instruction.

⁷ The Exchange represents that this designation will also be recorded in a separate memo field (or fields) that will allow other special instructions and special conditions to be entered in a free format.

⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letters from James E. Buck, Senior Vice President, NYSE, to Richard Strasser, Assistant Director, Division of Market Regulation ("Division"), Commission, dated December 18, 1998; and from Daniel P. Odell, Assistant Secretary, NYSE, to Richard Strasser, Division, Commission, dated June 7, 1999.

⁴ See Securities Exchange Act Release No. 41706 (August 4, 1999), 64 FR 44069.