

dictate that the specialist must either manually execute the order at the NBBO or a better price or act as agent for the order in seeking to obtain the best available price for the order on a marketplace other than the Exchange. If the specialist decides to act as agent for the order, the pilot program requires the specialist to use order-routing systems to obtain an execution where appropriate. Orders for securities quoted with a spread greater than the minimum variation are executed automatically after a fifteen second delay from the time the order is entered into MAX. The size of the specialist's bid or offer is then automatically decremented by the size of the execution. When the specialist's quote is exhausted, the system generates an autoquote at an increment away from the NBBO for 100 shares.

When the specialist is not quoting a Nasdaq/NM security at the NBBO, an order that is of a size less than or equal to the auto execution threshold designated by the specialist will execute automatically at the NBBO price up to the size of the auto execution threshold. Orders of a size greater than the auto execution threshold will be designated as open orders in the specialist's book and manually executed, unless the order-sending firm previously has advised the specialist that it elects partial automatic execution, in which event the order will be executed automatically up to the size of the auto execution threshold, with the balance of the order to be designated as an open order in the specialist's book.

Whether the specialist is quoting at the NBBO or not, "oversized" orders, *i.e.*, orders that are of a size greater than the auto acceptance threshold of 5099 shares (as designated by the specialist), are not subject to the foregoing requirements, and may be canceled within one minute of being entered into MAX or designated as an open order.

## 2. Statutory Basis

The CHX believes that the proposed rule is consistent with section 6(b) of the Act,<sup>18</sup> generally, and section 6(b)(5) of the Act<sup>19</sup> in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

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

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

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

No written comments were either solicited or received.

## 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<sup>20</sup> and subparagraph (f)(6) of Rule 19b-4<sup>21</sup> thereunder because the proposal: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the Exchange has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change. At any time within 60 days of the filing of such proposed 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.

The Exchange has requested that the Commission waive the 5-day pre-filing notification requirement and the 30-day operative delay. The Commission believes that waiving the 5-day pre-filing notification requirement and the 30-day operative delay is consistent with the protection of investors and the public interest.<sup>22</sup> The Commission notes that waiver of the 5-day pre-filing requirement and acceleration of the operative date will prevent the Exchange's pilot program relating to the trade of Nasdaq/NM securities from lapsing, and will allow the current rules to remain effective.

<sup>20</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>21</sup> 17 CFR 240.19b-4.

<sup>22</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

## 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 the filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-CHX-2003-35 and should be submitted by December 1, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>23</sup>

Jill M. Peterson,

Assistant Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48744; File Nos. SR-NSCC-2003-19 and SR-DTC-2003-11]

## Self-Regulatory Organizations; National Securities Clearing Corporation; The Depository Trust Company; Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Consolidation of Settlement Processing Operations and to the Use of the Federal Reserve Banks' Net Settlement Service

November 4, 2003.

## I. Introduction

On September 26, 2003, the National Securities Clearing Corporation ("NSCC") and The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") proposed rule change File No. SR-NSCC-2003-19 and proposed rule change File No. SR-DTC-2003-11 pursuant to Section 19(b)(1) of

<sup>18</sup> 15 U.S.C. 78f(b).

<sup>19</sup> 15 U.S.C. 78f(b)(5).

<sup>23</sup> 17 CFR 200.30-3(a)(12).

the Securities Exchange Act of 1934 ("Act").<sup>1</sup> Notice of the proposal was published in the **Federal Register** on October 17, 2003.<sup>2</sup> No comment letters were received. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

## II. Description

The NSCC and DTC proposed rule changes propose that NSCC and DTC consolidate their settlement processing operations. The NSCC proposed rule change proposes that NSCC require all its settling banks to use the Federal Reserve Banks' ("FRBs") Net Settlement Service ("NSS") to satisfy their end-of-day settlement obligations.<sup>3</sup>

### 1. Consolidated Settlement Processing Operation

Today, DTC and NSCC settlements are run on two separate systems each of which is fed throughout the day with debit and credit data generated by participant/member activities. At the end of the processing day, the data is summarized and reported by product category (e.g., in the case of NSCC, continuous net settlement, mutual funds, envelope services, etc. and in the case of DTC, delivery orders, stock loans, dividends, redemptions, etc.) through the Participant Terminal System ("PTS") on separate DTC and NSCC screens. The data is netted separately at DTC and at NSCC to produce an aggregate debit or credit at each clearing agency.

Following the determination of final net numbers for each participant/member for each clearing agency, a participant/member's credit balance at one clearing agency is netted against any debit balance at the other ("cross-endorsement"). The settling banks subsequently authorize settlement for their customers in an "acknowledgement" process and then transmit or receive funds to or from DTC's account and to or from NSCC's subaccount at the Federal Reserve Bank of New York ("FRBNY").

In order to promote operating efficiencies, improve risk management, and lower transaction processing costs, DTC and NSCC are seeking to introduce a consolidated settlement processing operation. A consolidated settlement processing operation will provide

participants/members with consolidated NSCC and DTC settlement reporting, a single point of access for both NSCC and DTC settlement information, and reduced settlement risk. This consolidation is intended to be operational only. It is not intended to affect the legal relationship that participants/members and their settling banks have with NSCC or DTC.

As part of the new consolidated settlement processing operation, DTC and NSCC participants/members and their settling banks will be provided with a single set of enhanced PTS functions. Each participant/member will be able to view its DTC and NSCC settlement activity and will be provided a consolidated end-of-day netted DTC/NSCC settlement obligation. A participant/member's debits and credits at DTC and at NSCC will be separately summarized in one consolidated activity statement which will show the final DTC and NSCC balances and the netted amount for each participant/member.

### 2. Net Settlement Service

To reduce settlement risk and to permit settling banks to settle their net-net debits at NSCC and at DTC with a single payment, NSCC is amending its procedures to require that NSCC settling banks satisfy their daily net-net debit balances at NSCC through the use of NSS. This requirement is consistent with DTC's requirement that its settling banks utilize NSS.<sup>4</sup>

As more fully described below, NSS will permit DTC, as NSCC's settlement agent, to submit instructions to have the FRB accounts of NSCC settling banks charged for their NSCC net-net debit balance. By centralizing DTC and NSCC's settlement processing and by adopting NSS as the payment mechanism, each settling bank's balance at NSCC (whether a net-net debit or a net-net credit) will also be aggregated or netted with its settlement balance at DTC resulting in only a single debit or single credit having to be made to the settling bank's FRB account. Utilization of NSS by NSCC members and their settling banks will eliminate the need for a settling bank to initiate a wire transfer in satisfaction of a net-net debit balance. This should reduce the risk a settling bank would be unable to meet its settlement obligations because of operational problems and should reduce the occurrences of late payment fees due to delays in wiring settlement funds.<sup>5</sup>

As part of requiring the use of NSS, NSCC is making certain technical corrections to assure that defined terms and other provisions are used consistently. Accordingly, NSCC's Rule 1 (Definitions and Descriptions) is being amended to (1) include a new definition of "settlement agent" as DTC will act as NSCC's settlement agent in collecting and paying out settlement monies and (2) set forth a definition of "net credit balance" which is currently used in Rule 12 (Settlement) and elsewhere in the Rules.

NSCC Rule 12 and Rule 55 (Settling Banks) are being amended to make clear that in those instances where NSCC permits a "settling member," "insurance carrier member," or "fund member" to settle other than through a settling bank, it will be deemed to have failed to settle if it fails to pay its "net debit balance."<sup>6</sup> In addition, rule language is being modified to make clear that settlement of monies will be effected in the manner provided for in NSCC's Procedures.

NSCC Procedure VIII (Money Settlement Service) is being amended to reflect the requirement that settling banks use NSS and to provide the procedures whereby settling banks that act as such for both NSCC and DTC ("common settling banks") will have their settlement balances at both clearing agencies aggregated or netted into a single payment or credit amount.

Prior to using NSS, settling banks will be required to sign with an FRB a "Settler Agreement" which incorporates a requirement that the settling bank agrees to the terms of the FRB's Operating Circular No. 12. Under Section 6.4 of Operating Circular No. 12, the settlement agent (i.e., DTC acts as settlement agent for NSCC) has certain responsibilities regarding allocation among settling banks of a claim for indemnity by the FRB. The allocation of any such claim among NSCC's members would be conducted in a manner as is described in NSCC Procedure VIII, Section 4(iv). The signed Settler Agreement must be on the settling bank's letterhead, signed by an authorized signer recognized by the FRB, and submitted to the FRB through DTC as NSCC's settlement agent. Settling banks that also act as settling banks for DTC participants previously had to sign a Settler Agreement with the FRB designating DTC as their NSS settlement agent. Accordingly, these settling banks will not be required to

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> Securities Exchange Act Release No. 48614 (October 9, 2003), 68 FR 59834.

<sup>3</sup> On September 2, 2003, DTC implemented the requirement that all DTC settling banks use NSS. Securities Exchange Act Release No. 48089 (June 25, 2003), 68 FR 40314 (July 7, 2003) [File No. SR-DTC-2002-06].

<sup>4</sup> *Supra* note 3.

<sup>5</sup> Should NSS not be available for any reason, then settling banks are obligated to settle their NSCC and DTC obligations by wire transfer.

<sup>6</sup> "Net debit balance" as used with respect to a member, insurance carrier member, or fund member means the amount by which the member's, insurance carrier member's, or fund member's gross debit balance for a business day exceeds its gross credit balance on that business day.

sign new Settler Agreements to cover NSCC's NSS settlement. Instead, as provided in NSCC Procedure VIII, the Settler Agreements they provide to DTC for delivery to the FRB designating DTC as their NSS settlement agent will be deemed to include the settling bank's NSCC settlement obligations as well as its DTC settlement obligations.

As is currently required, each settling bank will be required to acknowledge its NSCC net-net balance at the end of the day. However, any settling bank that is an NSCC Member and settles solely for its own account may elect to not acknowledge its net-net settlement balance at the end of the day.<sup>7</sup> This option will not be made available to settling banks that settle for others because the acknowledgement process includes the option to refuse to pay for a participant for whom the settling bank provides settlement services. Unless a settling bank has elected not to acknowledge its net-net settlement balance as provided above, DTC will not send a settling bank's net-net debit balance to a FRB for collection until the settling bank has acknowledged its balance.

As NSCC's settlement agent, DTC will send a "preadvice" to each settling bank, notifying the settling bank that DTC is about to send its NSS transmission to the FRB. If a settling bank does not have sufficient funds in its FRB account to enable DTC, as settlement agent, to debit the full amount of its settlement balance or should NSS not be available to a settling bank for any reason, the settling bank will be obligated to wire all such amounts to DTC prior to the designated cut-off time.<sup>8</sup>

A new item 4 in NSCC Procedure VIII sets forth the netting and payment obligations among common settling banks, NSCC, and DTC. For each common settling bank, DTC, as settlement agent, will aggregate or net the net-net debit or net-net credit as applicable due by or due to such bank from or to NSCC and DTC. If the common settling bank owes a settlement debit to both clearing agencies, DTC will debit the FRB account the sum of the

debit amounts. If the bank is owed a settlement credit from both, DTC will wire the bank the sum of the credit amounts.

Where the common settling bank owes a debit to one clearing agency and is owed a credit from the other, the common settling bank will be obligated to pay the net amount of that sum (if a net debit) or be entitled to receive the net amount (if a net credit). The clearing agency which prenet owes the settlement credit to the common settling bank will pay the net credit difference to the other clearing agency if the other clearing agency has a prenet debit.<sup>9</sup> NSCC will implement its failure to settle procedures if any common settling bank that had a net-net debit to NSCC before aggregation or netting of such amounts with the common settling bank's DTC settlement balance fails to pay its aggregate NSCC/DTC net debit amount, referred to as the "consolidated settlement debit amount," in full by the time specified in NSCC and DTC's procedures.

### III. Discussion

Section 19(b)(2)(B) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.<sup>10</sup> Because the proposed rule changes reduce the risk that a clearing bank will be late in fulfilling its settlement obligation, the proposed rule changes should better enable DTC and NSCC to fulfill their safeguarding obligations under Section 17A(b)(3)(F).

NSCC and DTC have requested that the Commission approve the proposed rule changes prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for approving the proposed rule changes prior to the thirtieth day after the date of publication of the notice of the filing because accelerated approval will give DTC and NSCC adequate time to notify their participants/members and to provide their participants/members with sufficient time to prepare for

implementation of the proposed rule changes before year end.

### IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act, that the proposed rule changes (File Nos. SR-NSCC-2003-19 and SR-DTC-2003-11) be and hereby are approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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## SOCIAL SECURITY ADMINISTRATION

[Social Security Ruling, SSR 03-03p.]

### Titles II and XVI: Evaluation of Disability and Blindness in Initial Claims for Individuals Aged 65 or Older

**AGENCY:** Social Security Administration.

**ACTION:** Notice of Social Security ruling.

**SUMMARY:** In accordance with 20 CFR 402.35(b)(1), the Commissioner of Social Security gives notice of Social Security Ruling, SSR 03-03p. We are revising Social Security Ruling (SSR) 99-3p, Title XVI: Evaluation of Disability and Blindness in Initial Claims for Individuals Age 65 or Older (64 FR 33337, June 22, 1999). SSR 99-3p was confined to individuals who apply for disability payments under title XVI of the Social Security Act (the Act). In this revised ruling, we are adding provisions for individuals who apply for disability benefits under title II of the Act. Section 216(l) of the Act phases in gradual increases in the full retirement age from age 65 to age 67. As a result of these increases we will be processing some disability claims under title II of the Act for individuals who are aged 65 or older. Therefore, this Ruling clarifies the Social Security Administration's standards and procedures for the adjudication of disability and blindness claims for individuals aged 65 or older under titles II and XVI of the Act. This Ruling supersedes SSR 99-3p.

In addition to the revisions made to incorporate instructions for title II

<sup>7</sup> Settling banks electing not to acknowledge their settlement balance will be required to sign an Acknowledgement Option Form. A common settling bank may not elect to opt out of acknowledging its balances unless it settles solely for its own account at both DTC and NSCC in which case that election will cover both the bank's NSCC and DTC net settlement balances.

<sup>8</sup> If a settling bank is experiencing extenuating circumstances and as a result needs to opt out of NSS for one business day and send its wire directly to DTC's FRBNY account for its debit balance, that settling bank must notify NSCC/DTC prior to acknowledging its settlement balance.

<sup>9</sup> For example, if NSCC owes the common settling bank \$5 million, and DTC is owed \$2 million by the common settling bank, NSCC will pay DTC \$3 million dollars which DTC will pay to the common settling bank using NSS.

<sup>10</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>11</sup> 17 CFR 200.30-3(a)(12).