

SCANA and PSNC now seek authorization for PSNC to pay dividends out of capital or unearned surplus before taking into consideration any impairment of goodwill recognized as a result of the merger between the companies ("Merger"),<sup>1</sup> in addition to previous authorizations in prior financing orders ("Prior Orders"),<sup>2</sup> which permitted PSNC to pay dividends out of additional paid-in-capital to the amount of its aggregate retained earnings immediately prior to the Merger and out of earnings before the amortization of goodwill.

On February 9, 2000, in the Merger Order, the Commission authorized SCANA to acquire PSNC. SCANA registered as a holding company under the Act on February 11, 2000. SCANA now owns directly three public-utility companies, PSNC, SCE&G (which generates, transmits, distributes and sells electricity and purchases and sells natural gas in South Carolina) and GENCO (which owns and operates a 580 MW generating facility in Goose Creek, South Carolina and sells all of the power generated by the facility to SCE&G).

In the Prior Orders,<sup>3</sup> the Commission authorized SCANA, the three utility subsidiaries and the nonutility subsidiaries to engage, subject to certain limitations, in certain financing and related activities. Authorization for these financing related activities under the Prior Orders expired February 11, 2003.<sup>4</sup> PSNC's authorization, however, to pay dividends out of capital or unearned surplus was not subject to this expiration date.

PSNC was authorized to pay dividends out of the additional paid-in-capital account up to the amount of its aggregate retained earnings immediately prior to the Merger and out of earnings before the amortization of the goodwill arising from the Merger.<sup>5</sup> The authorization was granted to take into consideration (1) the application of the purchase method of accounting to the Merger that caused PSNC's retained earnings, from before the Merger, to be

recharacterized as additional paid-in-capital and (2) the substantial level of goodwill resulting from the Merger, which was to be "pushed-down" to PSNC and reflected as additional paid-in-capital after the Merger (effectively leaving PSNC with no retained earnings, the traditional source of dividend payments, but a balance sheet showing a significant equity level).

In connection with the Merger, SCANA obtained Commission approval for PSNC to pay dividends (1) out of the additional paid-in-capital account up to the amount of its aggregate retained earnings immediately prior to the Merger and (2) out of earnings before the amortization of the goodwill arising from the Merger.<sup>6</sup>

In 2001, after the Merger in 2000, Statement of Financial Accounting Standard ("SFAS") 142 (Goodwill and Other Intangible Assets) was issued. SFAS 142 eliminated the previously permitted amortization of goodwill and provides for, at least, an annual assessment to determine whether goodwill amounts are impaired. If the annual analysis determines that goodwill (or other intangibles) is impaired, the company must take an impairment charge in that year. SCANA did such an analysis and, as of January 1, 2002, PSNC was required to take an impairment charge of \$230 million against the value of its goodwill. For the years 2000 and 2001, PSNC amortized goodwill, as previously authorized.

Applicants now request that PSNC be authorized to pay dividends out of earnings before any deductions resulting from any impairment of either goodwill recognized as a result of the Merger. SCANA asserts that, based on anticipated earnings and dividend levels, as well as its estimated debt, PSNC will not have common equity below 30% over the next several years. Moreover, SCANA states that, through control of debt and dividend levels, PSNC's common equity can be maintained at a 30% level, at least (even if PSNC were to incur additional goodwill impairment charges). In no case will dividends be paid if the equity of PSNC, as a percentage of total capital, is below 30% on a consolidated basis.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 03-30054 Filed 12-2-03; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48829; File No. SR-Amex-2003-95]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to Fees for Amex Specialist and Registered Trader Transactions in ETFs

November 24, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on November 13, 2003, the American Stock Exchange LLC ("Exchange" or "Amex") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Amex. 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

Amex proposes to modify transaction fees for specialist and registered trader transactions in portfolio depository receipts, index fund shares, and trust issued receipts (collectively referred to as "ETFs"). The text of the proposed rule change is available at Amex and at the Commission.

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

In its filing with the Commission, Amex 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. Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

###### 1. Purpose

The Exchange is proposing to reduce transaction fees charged specialists and traders for ETFs. Under the proposed fee changes, specialist per share transaction

<sup>1</sup> By order dated February 9, 2000 (the "Merger Order"), the Commission authorized SCANA, a South Carolina corporation, to acquire all of the issued and outstanding common stock of PSNC. See Holding Co. Act Release No. 27133.

<sup>2</sup> See Holding Co. Act Release Nos. 27135 and 27137 (Feb. 14, 2000). In Holding Co. Act Release Nos. 27341 and 27476 (Jan. 31, and Dec. 19, 2001, respectively) the Commission issued supplemental orders increasing various financing limitations throughout the authorization period.

<sup>3</sup> See *supra* note 2.

<sup>4</sup> New financing authorization was granted in Holding Co. Act Release No. 27649 (Feb. 12, 2003) (the "Current Financing Order").

<sup>5</sup> The only intangible in the Merger was goodwill.

<sup>6</sup> See the Prior Orders, *supra* note 2.

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

<sup>2</sup> 17 CFR 240.19b-4.

fees for ETFs where Amex does not pay unreimbursed fees to a third party would be reduced from \$0.0063 per share (\$0.63 per hundred shares) to \$0.0055 per share (\$0.55 per hundred shares). Registered trader per share ETF transaction fees would be reduced from \$0.0073 per share (\$0.73 per hundred shares) to \$0.0060 per share (\$0.60 per hundred shares).

With respect to ETF fees where Amex pays unreimbursed fees to a third party, specialist per share ETF transaction fees would be reduced from \$0.0070 per share (\$0.70 per hundred shares) to \$0.0059 per share (\$0.59 per hundred shares). Registered trader per share ETF transaction fees would be reduced from \$0.0076 per share (\$0.76 per hundred shares) to \$0.0062 per share (\$0.62 per hundred shares).

Specialist per trade transaction fees would remain capped at \$300 per trade and registered trader per trade maximum transaction fees would be reduced from \$350 to \$300. In addition, specialist ETF transaction charges would be capped at \$700,000 per month per unit. The Exchange intends to implement the proposed fee changes as of December 1, 2003.

## 2. Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,<sup>3</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>4</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers, and other persons using its facilities.

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

Amex does not believe that the proposed rule change will impose 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*

No written comments were solicited or received with respect to the proposed rule change.

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

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>5</sup> and

subparagraph (f)(2) of Rule 19b-4<sup>6</sup> thereunder, because it establishes or changes a due, fee, or other charge.

At any time within 60 days of November 13, 2003, 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.<sup>7</sup>

## 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 such filing will also be available for inspection and copying at the principal office of Amex. All submissions should refer to File No. SR-Amex-2003-95 and should be submitted by December 24, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>8</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

[FR Doc. 03-30057 Filed 12-2-03; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48819; File No. SR-NSCC-2003-01]

### Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Withdrawal of a Proposed Rule Change Relating to New Rule 59, "Information Services for Investment Products"

November 21, 2003.

On January 17, 2003, National Securities Clearing Corporation ("NSCC") submitted to the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> to allow NSCC to provide information services for investment products. The proposed rule change was published in the **Federal Register** on April 17, 2003.<sup>2</sup> One comment letter was received.<sup>3</sup> On June 27, 2003, NSCC withdrew the proposed rule change.<sup>4</sup>

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

[FR Doc. 03-30061 Filed 12-2-03; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48838; File No. SR-CBOE-2003-31]

### Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Thereto by the Chicago Board Options Exchange, Incorporated Relating to Audit Committee Requirements Applicable to Companies Listing Non-Option Securities

November 25, 2003.

## I. Introduction

On July 11, 2003, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the

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

<sup>2</sup> Securities Exchange Act Release No. 47662 (April 10, 2003), 68 FR 19047.

<sup>3</sup> Letter from Margaret A. Sheehan, Alston & Bird LLP, on behalf of CheckFree Corporation (May 9, 2003).

<sup>4</sup> Letter from Carol A. Jameson, Vice President and Senior Counsel, NSCC, to Jerry Carpenter, Assistant Director, Division of Market Regulation, Commission (June 26, 2003).

<sup>5</sup> 17 CFR 200.30-3(a)(12).

<sup>3</sup> 15 U.S.C. 78f(b).

<sup>4</sup> 15 U.S.C. 78f(b)(5).

<sup>5</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>6</sup> 17 CFR 240.19b-4(f)(2).

<sup>7</sup> See 15 U.S.C. 78s(b)(3)(C).

<sup>8</sup> 17 CFR 200.30-3(a)(12).