

securities. The Commission finds that the proposed amendments to NASD Rules 2710 and 2810 will protect investors and the public interest by helping to ensure that investors in DPPs and REITs that are sold in a public offering receive ongoing valuation information concerning their investments.

#### *G. Implementation of the Proposed Rule Change*

The NASD has requested that the proposed rule change become effective three months after the NASD notifies its members of Commission approval of the proposal.<sup>42</sup> The Commission believes that the proposed period for implementing the proposal will provide NASD members and service organizations with time to modify their computer systems to comply with the proposal, thereby helping to ensure that NASD members are adequately prepared to implement the proposed changes.

#### *H. Accelerated Approval of Amendment Nos. 1 and 2*

The Commission finds good cause for approving Amendment Nos. 1 and 2 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 1 clarifies that an NASD member is not obligated to guarantee the accuracy of an estimated value obtained from a third-party source. Amendment No. 2 strengthens the proposal by prohibiting a member from using an estimated valuation on a customer account statement if the member can demonstrate that the value was inaccurate as of the date of the valuation or is no longer accurate. Accordingly, the Commission finds that it is consistent with Sections 15A(b)(5) and 19(b) of the Act to approve Amendment Nos. 1 and 2 on an accelerated basis.

#### **V. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning Amendments Nos. 1 and 2, including whether Amendment Nos. 1 and 2 are 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, 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 the NASD. All submissions should refer to File No. SR-NASD-00-13 and should be submitted by December 20, 2000.

#### **VI. Conclusion**

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>43</sup> that the proposed rule change (File No. SR-NASD-00-13), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>44</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00-30374 Filed 11-28-00; 8:45 am]

**BILLING CODE 8010-01-M**

#### **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-43616; File No. SR-NASD-99-65]

#### **Self-Regulatory Organizations; Notice of Filing of Amendment Nos. 2 and 3 to Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Creation of a Corporate Bond Trade Reporting and Transaction Dissemination Facility and the Elimination of Nasdaq's Fixed Income Pricing System**

November 24, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 17, 2000 and November 22, 2000, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") Amendment Nos. 2 and 3 to the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The proposed rule change was published for comment in the **Federal Register** on December 10, 1999.<sup>3</sup> The Commission is publishing this notice to solicit comments on Amendment Nos. 2 and 3

<sup>43</sup> 15 U.S.C. 78s(b)(2).

<sup>44</sup> 17 CFR 200.30-3(a)(12).

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

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

<sup>3</sup> See Securities Exchange Act Release No. 42201 (Dec. 3, 1999), 64 FR 69305.

to the proposed rule change from interested persons.<sup>4</sup>

Amendment No. 2 reflects certain changes proposed by the commenters in response to the proposed rule change, as originally noticed, or changes suggested by the NASD staff after additional review. Amendment No. 3 sets forth the statutory basis of the proposed rule change. For convenience, the proposed NASD Rules in Amendment No. 2 are referred to as the TRACE Rules, in reference to the proposed facility, which is currently referred to as the Trade Reporting and Comparison Entry Service (TRACE).<sup>5</sup>

#### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The NASD proposes the following amendments to the rule text (as originally proposed) in response to comment letters or suggestions by the NASD staff after additional review. Proposed additions are italicized; proposed deletions are in brackets.

\* \* \* \* \*

#### **6200. Trade Reporting and Comparison Entry Service (TRACE)**

##### **6210. Definitions**

The terms used in this [paragraph] *Rule 6200 Series* shall have the same meaning as those defined in the Association's By-Laws and Rules unless otherwise specified.

(a) The term ["TRACE eligible Security"] "*TRACE-eligible security*" shall mean all United States dollar denominated debt securities that are registered with the Securities and Exchange Commission and issued by United States and/or foreign private corporations and that are depository eligible securities as defined in Rule 11310(d); all debt securities qualified as PORTAL securities pursuant to the Rule 5000 Series; all investment-grade rated debt securities that are issued pursuant to Section 4(2) of the Securities Act of 1933 and that are depository eligible securities pursuant to Rule 11310(d).

<sup>4</sup> The NASD previously submitted Amendment No. 1 to reflect the Association's receipt of written comments from the Regional Municipal Operations Association. After consultation with the Commission staff, the NASD withdrew Amendment No. 1 and has incorporated RMOA's comments and the NASD's response in Amendment No. 2. As explained in the original proposal, the NASD represents that it will file a separate proposal to establish appropriate fees and charges for TRACE prior to implementation.

<sup>5</sup> The NASD represents that it will rename TRACE. When a new name is selected, the NASD will amend the TRACE Rules prior to implementation of the service to reflect that name change.

<sup>42</sup> See November 20 Conversation, *supra* note 22.

(b) The term "Trade Reporting And Comparison Entry Service" or "TRACE" shall mean the automated system owned and operated by the *the NASD* [The Nasdaq Stock Market, Inc.] that, among other things, accommodates reporting[, comparison,] and dissemination of transaction reports where applicable in TRACE-eligible securities [Securities] and which may submit "locked-in" trades to National Securities Clearing Corporation for clearance and settlement and provide participants with monitoring and risk management capabilities to facilitate a "locked-in" trading environment.

(c) The term "reportable TRACE transaction" shall mean [all] any transaction[s] in a TRACE-eligible security [Eligible Security as required by this rule].

(d) The term "time of execution" for a transaction in a TRACE-eligible security shall be the time when *the parties agree to* all of the terms of the transaction [are agreed to which] *that* are insufficient to calculate the dollar price of the trade. The time of execution for transactions involving TRACE-eligible securities that are trading "when issued" on a yield basis shall be when the yield for the transaction has been agreed to by the parties.

(e) The term ["Parties to the Transaction"] "*parties to the transaction*" shall mean the executing broker/dealer, introducing broker/dealer, and clearing brokers, if any.

(f) The term "TRACE Participant" shall mean any NASD member [in good standing] that uses the TRACE system.

[(g) The term "TRACE Reporting Party" shall mean a member of the Association that is registered as a TRACE participant with the Association and obligated to report a TRACE transaction pursuant to TRACE system rules and who is member of a registered clearing agency for clearing or comparison purposes or has a clearing arrangement with such a member.]

[(h) The term "TRACE Non-Reporting Party" shall mean a member of the Association that is registered as a TRACE participant with the Association who is not obligated to report under TRACE system rules for a particular transaction to which it is a party and who is member of a registered clearing agency for clearing or comparison purposes or has a clearing arrangement with such a member. It shall also mean any customer who is not a member of the Association.]

[(i) The term "Clearing Broker/Dealer" or "Clearing Broker" shall mean the member firm that has been identified in the TRACE system as principal for clearing and settling a trade, whether for

its own account or for a correspondent firm.]

[(j) The term "Correspondent Executing Broker/Dealer" or "Correspondent Executing Broker" shall mean the member firm that has been identified in the TRACE system as having a correspondent relationship with a clearing firm whereby it executes trades and the clearing function is the responsibility of the clearing firm.]

[(k)(g) The term ["Introducing Broker/Dealer" or "introducing broker"] "*Introducing Broker*" shall mean the member firm that has been identified in the TRACE system as a party to the transaction, but does not execute or clear trades.

[(l) The term "Browse" shall mean the functions of TRACE that permit a Participant to review (or query) for trades in the system identifying the Participant as a party to the transaction, subject to the specific uses contained in the TRACE Users Guide.]

[(m) The term "Gross Dollar Thresholds" in the risk management application of TRACE shall mean the daily dollar amounts for purchases and sales that a clearing broker establishes in the TRACE system for each correspondent executing broker that may be raised or lowered on an inter-day or intra-day basis. If the value of a correspondent's trades equals or exceeds the gross dollar thresholds, the system will alert the clearing broker.]

[(n) The term "Pre-alert" shall mean the alert notifying the correspondent executing broker and the clearing broker that the correspondent executing broker has equaled or exceeded 70% of the purchase or sale gross dollar limits established by the clearing broker. The Association reserves the right to modify the percentage of the pre-alert as necessary and upon prior notification to the TRACE Participants.]

[(o) The term "Single Trade Limit" shall mean the dollar amount established by the Clearing Broker for a single trade that enables a TRACE clearing firm to review the trade before it is obligated to clear the trade. When a correspondent executing broker negotiates a trade that equals or exceeds the Single Trade Limit, its clearing broker shall have a period of thirty (30) minutes to review and agree to decline to act as principal for clearing that trade. If a Clearing Broker fails to set a single trade limit the TRACE system will automatically set a default single trade limit of \$0 for the Correspondent Broker. The Association reserves the right to modify the minimum/maximum dollar amount of the Single Trade Limit as well as the time frame for clearing broker review as necessary and upon

prior notification to the TRACE Participants.]

[(p)] (h) [For purposes of these rules, the] *The term "Investment Grade"* shall mean any TRACE-eligible security rated by a nationally recognized statistical rating organization in one of its four highest generic rating categories.

[(q)] (i) [For purposes of these rules, the] *The term "Non-Investment Grade"* shall mean any TRACE-eligible security that is unrated, non-rated, split-rated (where one rating falls below investment grade), or does not meet the definition of [investment grade] *Investment Grade* in paragraph [(p)] (h)[,] above.

## 6220. Participation in TRACE

(a) Mandatory *Member* Participation [for Clearing Agency Members]

(1) Pursuant to Article VII, Section 1(a)(vi) and (vii) of the By-Laws, participation in TRACE is mandatory for all brokers/dealers that are members of a clearing agency registered with the Commission pursuant to Section 17A of the Act, and for all brokers that have a clearing arrangement with such a broker. Such participation shall include the reconciliation of all over the counter clearing agency eligible transactions involving TRACE securities.] *Member participation in TRACE for trade reporting purposes is mandatory. Such mandatory participation obligates members to submit transaction reports in TRACE-eligible securities in conformity with the Rule 6200 Series.*

(2) Participation in TRACE shall be conditioned upon the TRACE Participant's initial and continuing compliance with the following requirements:

(A) execution of, and continuing compliance with, a TRACE Participant Application Agreement and all applicable rules and operating procedures of the Association and the Commission; *and*

[(B) membership in, or maintenance of, an effective clearing arrangement with a member of a clearing agency registered pursuant to the Act;]

[(C)] (B) maintenance of the physical security of the equipment located on the premises of the TRACE Participant to prevent unauthorized entry of information into TRACE[; and]

[(D) acceptance and settlement of each trade that TRACE identifies as having been effected by such TRACE Participant, or if settlement is to be made through a clearing member, guarantee the acceptance and settlement of each TRACE identified trade by the clearing member on the regularly scheduled settlement date.]

[(3) Participation in TRACE as a Clearing Broker shall be conditioned upon the Clearing Broker's initial and continuing compliance with the following requirements:]

[(A) execution of, and continuing compliance with, a TRACE Participant Application Agreement and all applicable rules and operating procedures of the Association and the Commission;]

[(B) membership in a clearing agency registered pursuant to the Act;]

[(C) maintenance of the physical security of the equipment located on the premises of the TRACE Clearing Broker to prevent the unauthorized entry of information into TRACE; and]

[(D) acceptance and settlement of each trade that TRACE identifies as having been effected by itself or any of its correspondents on the regularly scheduled settlement date.]

[(4)] (3) Each TRACE Participant shall be obligated to inform the Association of non-compliance with, or changes to, any of the participation requirements set forth above.

#### (b) Participant Obligations in TRACE

##### (1) Access to TRACE

Upon execution and receipt by the Association of the TRACE Participant Application Agreement, a TRACE Participant may commence input and validation of trade information in TRACE-eligible securities. TRACE Participants may access the service via an NASD-approved facility during the hours of operation.

##### (2) Clearing Obligations

If at any time a TRACE Participant fails to maintain a clearing arrangement, it shall be removed from the TRACE system until such time as a clearing arrangement is reestablished and notice of such arrangement is provided to the Association. If, however, the Association finds that the TRACE Participant's failure to maintain a clearing arrangement is voluntary, the withdrawal will be considered voluntary and unexcused. *This section shall not apply to TRACE Participants whose trading activity obviates the need for maintaining a clearing relationship.*

##### [(3) Clearing Broker Obligations]

[(A) Clearing brokers may cease to act as principal for a correspondent executing broker at any time provided that notification has been given to, received and acknowledged by the TRACE Operations Center and affirmative action has been completed by the Center to remove the correspondent broker from TRACE. The clearing broker's obligation to accept

and clear trades for its correspondents shall not cease prior to the completion of all of the steps detailed in this subparagraph (3).]

[(B) TRACE Clearing brokers shall establish for each correspondent executing broker daily Gross Dollar Thresholds and may raise or lower the thresholds on an inter-day or intra-day basis. TRACE clearing brokers will receive a system alert when a correspondent executing broker equals or exceeds its gross dollar thresholds and will also receive a system pre-alert when a correspondent executing broker equals or exceeds 70% of the daily thresholds.]

[(C) For trades effected by a correspondent executing broker that equal or exceed the correspondent's Single Trade Limit set by the clearing broker in TRACE, clearing brokers have 30 minutes from the time of trade report input to TRACE to review the trade and accept or decline to act as principal to the trade. If the clearing broker does not make an affirmative acceptance or declination of the trade report within 30 minutes, the trade report will be subject to normal TRACE processing and the clearing broker will be obligated to act as principal for the trade.]

#### **6230. Transaction Reporting**

##### (a) When and How Transactions Are Reported

(1)(A) [All NASD members] *Members that are required to report transaction information pursuant to paragraph (b) below* shall, within 1 hour after trade execution, transmit through TRACE during system hours, or if TRACE is unavailable due to system or transmission failure, by telephone to the TRACE Operations Center, reports of transactions in TRACE-eligible securities [Securities] executed between 8:00 a.m. and 6:30 p.m. Eastern Time [or shall utilize the Browse function in TRACE to accept or decline trades within 30 minutes after execution according to paragraph (b) of this rule]. Transactions not reported within 1 hour after execution shall be designated as late; *provided, however, that if* [unless] inadequate time remains prior to system close to allow a timely report[. In this situation], *the member may report* [must be made] *the transaction the next day at system open as designated "as/of."*

*(B) Members have an ongoing obligation to report transaction information promptly, accurately, and completely. The member may employ an agent for the purpose of submitting transaction information; however, the primary responsibility for the timely, accurate, and complete reporting of*

*TRACE information remains the nondelegable duty of the member obligated to report the transaction.*

##### (2) Transaction Reporting Between 6:30 p.m. and 8:00 a.m. Eastern Time

(A) Reports of transactions in TRACE-eligible securities [Securities] executed after 6:30 p.m. Eastern Time and before 12:00 a.m. Eastern Time shall be reported on the next day and be designed "as/of." [.] Such trade reports will not be included in daily market aggregates and will be disseminated beginning at 8:00 a.m. Eastern Time on the day of receipt.

(B) Report of transaction in TRACE-eligible securities [Securities] executed after 12:00 a.m. Eastern Time and before 8:00 a.m. Eastern Time shall be reported that same day beginning at 8:00 a.m. Eastern Time[.] within the maximum time frame mandated. Such trade reports will be included in that day's market aggregates and disseminated upon receipt.

[A pattern or practice of late reporting without exceptional circumstances may be considered inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of Rule 2110.]

##### (b) Which Party Reports Transaction

[Both parties executing a transaction shall, subject to the input requirements below, either input trade reports into the TRACE system or utilize the Browse feature to accept or decline a trade within the applicable time frames as specified in paragraph (a)(1) of this Rule.] Trade data input obligations are as follows:

(1) [in] *In* transactions between two [TRACE Participants] *members*, the member representing the sell side shall submit a trade report to TRACE;

(2) [in] *In* transactions [between] *involving* a[n NASD] member and a non-member including a customer, the [NASD] member shall [be required to] submit a trade report to TRACE.

##### (c) Trade Information To Be Reported

Each TRACE trade report shall contain the following information:

(1) CUSIP number or NASD symbol;

(2) Number of bonds as required by paragraph (d) below;

(3) Price of the transaction as required by paragraph (d) below;

(4) A symbol indicating whether the transaction is a buy, sell or cross;

(5) Date of Trade Execution (as/of trades only);

(6) Contra-party's identifier;

(7) Capacity—Principal or Agent (with riskless principal reported as principal) as required by paragraph (d) below;

(8) Time of trade execution;  
 (9) Reporting side executing broker as "give up" (if any);  
 (10) Contra side [introducing broker] *Introducing Broker* in case of "give up" trade;

(11) Stated commission;  
 (12) Such trade modifiers as required by either: (a) the TRACE [System] Rules; and/or (b) the TRACE Users Guide[.]; and

(13) *Yield as required by SEC Rule 10b-10.*

(d) Procedures for Reporting Price, Capacity, Volume

(1) For agency and principal transactions, report the price, including the mark-up, mark-down or commission (commission entered separately). Do not include accrued interest.

(2) For agency and principal transactions, report the actual number of bonds traded. Baby bonds (those with a face value of less than \$1,000) should be reported expressed as a decimal.

(3) *For in-house* [In house] cross transactions, *report* [should be reported] as follows: Agency cross—report once as an agency trade; Principal cross—report twice, once as an individual principal buy and once as an individual principal sell.

(e) Transactions Not Required To Be Reported

The following types of transactions shall not be *required to be* reported:

(1) Transactions [which] *that* are part of a primary distribution by an issuer;

(2) Transactions made in reliance on Section 4(2) of the Securities Act of 1933;

(3) Transactions in listed securities that are both executed on, and reported to, a national securities exchange;

(4) Transactions where the buyer and the seller have agreed to trade at a price substantially unrelated to the current market for the TRACE-eligible security (e.g., to allow the seller to make a gift).

(f) *Compliance With Reporting Obligations*

*A pattern or practice of late reporting without exceptional circumstances may be considered conduct inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of Rule 2110.*

*Rule 6231. Reporting of Transaction Information Sent to Clearing Agency*

(a) *When and How Transactions Are Reported*

*Each NASD member shall submit to TRACE the same transaction information (for transactions in TRACE-eligible securities) that the member*

*supplies to its registered clearing agency for clearance and settlement. Such information shall be submitted to TRACE by the time the member transmits the information to its registered clearing agency.*

(b) [(b)]

(1) *In transactions between two members, both the member representing the sell side and the member representing the buy side shall submit the transaction information specified in Paragraph (a) above to TRACE.*

(2) *In transactions involving a member and a non-member, including a customer, the member shall submit the transaction information specified in paragraph (a) above to TRACE.*

#### [6240. TRACE Processing]

[Locked-in trades may be determined in the TRACE system by matching the trade information submitted by the reporting parties through one of the following methods:]

[(a) Trade by Trade Match]

[Both parties to the trade submit transaction data and the TRACE system performs an on-line match;]

[(b) Trade Acceptance]

[The TRACE reporting party enters its version of the trade into the system and the TRACE non-reporting contra party reviews the trade report and accepts or declines the trade. An acceptance results in a locked-in trade; a declined trade report is purged from the TRACE system at the end of trade date processing;]

[(c) Post Trade Date Processing]

[T+N entries may be submitted during system hours each business day. At the end of daily matching, all declined trade entries will be purged from the TRACE system. TRACE will not purge any open trade (i.e., unmatched or unaccepted) at the end of its entry day, but will carry-over such trades to the next business day for continued comparison and reconciliation. TRACE will automatically lock in and submit to NSCC as such any carried-over T to T+21 (calendar day) trade if it remains open as of 2:30 p.m. on the next business day. TRACE will not automatically lock in T+22 (calendar day) or older open "as-of" trades that were carried-over from the previous business day; these will be purged by TRACE at the end of the carry-over day if they remain open. Members may re-submit these T+22 or older "as-of" trades as a comparison-only entry into TRACE on the next business day for continued comparison and

reconciliation for up to one calendar year.]

#### [6250. TRACE Risk Management Functions]

[The TRACE system will provide the following risk management capabilities to clearing brokers:]

[(a) Trade File Scan]

[Clearing brokers will be able to scan the trading activities of their correspondent executing brokers through the TRACE system.]

[(b) Gross Dollar Threshold]

[Clearing brokers will be able to establish, on an inter-day or intra-day basis, gross dollar thresholds for purchases and sales for their correspondent executing brokers, and the TRACE system will alert the clearing broker and its correspondent if the correspondent's trading activity equals or exceeds either threshold.]

[(c) Gross Dollar Threshold Pre-Alert]

[In addition to the gross dollar threshold alert, the TRACE system will also alert the clearing broker and its correspondent when the correspondent's trading activity equals or exceeds 70% of either gross dollar threshold.]

[(d) On-line Review]

[Clearing brokers that access TRACE through a computer interface will be able to receive intra-day activity of their correspondents as it is reported.]

[(e) Single Trade Limit]

[Clearing brokers will have 30 minutes from trade report input to TRACE to review any single trade executed by their correspondent executing brokers that equals or exceeds an amount set by the clearing broker for that correspondent in order to decide to act as principal. If, however, the clearing broker does not affirmatively accept or decline the trade, at the end of 30 minutes, the system will subject the trade to normal TRACE processing and the clearing broker will be obligated to act as principal to clear the trade.]

[(f) Super Cap]

[The Super Cap will be set as an amount to be determined by the Clearing Broker, but in no event less than the gross dollar threshold. When a correspondent's Super Cap is reached, notice will be furnished to TRACE participants, and no trade in excess of an amount set by the clearing broker for that correspondent will be accepted for TRACE processing unless the clearing broker accepts the trade within 30 minutes of execution.]

**[6260. Obligation to Honor Trades]**

[If a TRACE Participant is reported by TRACE as a party to a trade that has been treated as locked-in and sent to NSCC, notwithstanding any other agreement to the contrary, that party shall be obligated to act as a principal to the trade and shall honor such trade on the scheduled settlement date.]

**[6261. Compliance with TRACE Rules and Trade Reporting Requirements]**

[Failure of an NASD member, or person associated with a member, to comply with any of the rules or requirements of TRACE, or failure of a member or associated person to comply with any of the transaction reporting requirements for TRACE-Eligible Securities may be considered conduct inconsistent with high standards of commercial honor and just and equitable principals of trade, in violation of Rule 2110.]

**[6270] 6240. Audit Trail Requirements**

The data elements specified in Rule [6220(c)] *6230(c)* are critical to the Association's compilation of a transaction audit trail for regulatory purposes. As such, all member firms [utilizing] *using the TRACE [Service] service* have an ongoing obligation to input [6220(c)] *Rule 6230(c)* information accurately and completely.

**[6280] 6250. Termination of TRACE Service**

The Association may, upon notice, terminate TRACE service to a [Participant] *member* in the event that a[[n] TRACE Participant] *member* fails to abide by any of the rules or operating procedures of the TRACE service or the Association, or fails to honor contractual agreements entered into with the Association or its subsidiaries, or fails to pay promptly for services rendered by the TRACE [Service] *service*

**[6290] 6260. Dissemination of Corporate Bond Trade Information**

[Trade reports entered into TRACE will be collected, processed and disseminated on a real-time basis between 8 a.m. and 6:30 p.m. Eastern Time.]

(a) *The Association will disseminate transaction information immediately upon receipt of transaction reports between 8 a.m. and 6:30 p.m. Eastern Time relating to transactions in Investment Grade corporate bonds having an initial issuance size of \$1 billion or greater.*

(b) *All trade reports in TRACE-eligible securities approved for dissemination and submitted to TRACE prior to 5:15 p.m. Eastern Time will be included in*

the calculation of market aggregates and last sale except 1[.] trades reported on an "as of" basis, 2) "when issued" trades executed on a yield basis, or 3) trades in baby bonds with a par value of less than \$1,000.

**[6291] 6270. Lead Underwriter Information Obligation**

In order to facilitate trade reporting of secondary transactions in TRACE-eligible securities, *the member that is the lead underwriter of any newly[-]issued TRACE-eligible security shall provide to the TRADE Operations Center the CUSIP number of any debt issue no later than on the effective date of the offering.*

\* \* \* \* \*

**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.

**(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change****1. Purpose**

In 1998, SEC Chairman Arthur Levitt, in recognition of the relative lack of transparency in the corporate debt market, called upon the NASD to do the following: (1) Adopt rules requiring NASD members to report all transactions in corporate bonds to the NASD and to develop systems to receive and distribute transaction prices on an immediate basis; (2) create a database of transactions in corporate bonds to enable regulators to take a proactive role in supervising the corporate debt market; and (3) create a surveillance program, in conjunction with the development of a database, to better detect fraud and foster investor confidence in the fairness of the corporate debt market. The NASD notes that after extensive consultation with industry professionals, it filed SR-NASD-99-65. The NASD also states that it consulted extensively with industry professionals again before filing Amendment Nos. 2 and 3.

TRACE has generated significant comment. The NASD has identified the following common areas in the comment letters: (a) TRACE ownership, operation, and governance; (b) the proposed comparison function; (c) collection and dissemination of data; (d) TRACE data; (e) implementation schedules; and (f) T + 1 clearance and settlement and straight-through-processing (STP) issues. These issues are addressed below. In addition, the NASD is proposing to add bond yield as a mandatory element of reporting, which is discussed as item (g) below.

**a. TRACE Ownership, Operation and Governance**

As noted above, at the request of the SEC, the NASD has proposed to create a system for the reporting, dissemination and surveillance of fixed income transactions. Many commenters expressed concern about, or requested further information regarding, the roles and responsibilities of NASD and Nasdaq in this initiative. In response to those concerns, the NASD states that it will take the following steps to clarify the roles of NASD, NASD Regulation, and Nasdaq:

(1) The NASD will amend proposed TRACE Rule 6210 to clarify that it is the owner and operator of the facility, TRACE, to collect information on fixed income transactions and to disseminate such information;

(2) The NASD will file an application with the SEC to become registered as a exclusive securities information processor (ESIP) under Section 11A of the Act;

(3) The NASD, with the approval of the NASD Board of Governors, will establish a body of rules and policies that will be the bases on which NASD staff will administer the reporting and dissemination facility and assure compliance with the TRACE Rules;

(4) NASD Regulation will aid the NASD in establishing appropriate regulatory rules and policies and in performing all the regulatory functions associated with TRACE; and

(5) Nasdaq will provide technology and operational support pursuant to a contractual arrangement.

The NASD believes that the structure outlined above is responsive to many of the concerns raised by commenters. The NASD, the sole self-regulatory organization ("SRO") for the over-the-counter (OTC) markets, represents that it will exercise full ownership and operational control over the TRACE project, including day-to-day administration and the information collection process. The NASD states that it will become an ESIP under Section

11A of the Act, providing appropriate regulatory oversight by the SEC of the NASD's operations, administration, and fees. The NASD also represents that it will be able to employ Nasdaq as its vendor of information processing services. The NASD believes that this will allow it to take advantage of Nasdaq's prior experience, yet exercise appropriate regulatory and administrative control over the collection of the information, the fees charged, the selection of vendors, and other important administrative and regulatory matters. The NASD believes that this structure parallels the structure used by other registered ESIPs under Section 11A, such as the Consolidated Tape Association (CTA) and Options Price Reporting Authority (OPRA). For example, the NASD represents that CTA, for purposes of Networks A and B, and OPRA, for purposes of options information, obtain information processing services by agreement with SIAC, and do so without decreasing their control or ceding such control to SIAC.

Although ultimate statutory authority will reside with the NASD Board of Governors, to more fully incorporate bond market expertise into TRACE operations and decision-making, the NASD proposes to create a new committee, the Bond Transaction Reporting Committee (BTRC), to advise the NASD Board. BTRC would consist of 8 persons selected by the NASD Board. Four of the members will be recommended by the staff of the NASD, and the other four members will be recommended by the Bond Market Association (TBMA). Selections would not include current staff or officers of either the NASD or TBMA. Both the NASD and TBMA would commit to having their selections consist of a broad range of bond market participants and include public representation. BTRC would provide representative input to the NASD Board on issues related to the operation of TRACE, including future NASD proposals to phase in dissemination and the setting of fees for dissemination of real-time TRACE data to the public. In addition, BTRC will be tasked with reviewing the effects upon liquidity associated with the dissemination of fixed income transaction information. BTRC will make recommendations to the NASD Board concerning appropriate time frames for public dissemination of smaller, less-actively traded issues.

The NASD represents that the NASD Board will give significant weight to the advice and recommendations of the BTRC. The NASD represents, however, that the formation and operation of

BTRC shall in no way limit or hinder the responsibility and ability of the NASD Board to make final decisions, as required in accordance with the statutory obligations and responsibility articulated in Section 15A of the Act and the NASD By-Laws. In addition, the NASD represents that its staff may continue to make independent recommendations or proposals to the NASD Board concerning bond market issues.

In addition to concern expressed by some commenters about the role of Nasdaq in the TRACE initiative, other commenters suggested that a super-utility, rather than the NASD or Nasdaq, be used to collect fixed income transaction information. Others suggested the creation of a new SRO or vesting that authority in the NSCC. Since the NASD is the SRO charged with regulating the OTC markets and 95% of corporate bond transactions occur in the OTC market, the NASD believes that it is the SRO most appropriately situated to undertake this regulatory initiative and to assure compliance with it. It believes that creating a super-utility or a new SRO would not be cost-effective, would result in regulatory duplication and duplicative fees to the industry, and would delay greatly the implementation of reporting and dissemination.

Finally, one set of commenters, consisting of a data vendor and securities exchange, urged the Commission to adopt a de-centralized, multiple SRO-collector and disseminator model for fixed income transaction reporting. These commenters assert that such a model would encourage innovation and competition among organizations for the collection, comparison and dissemination of corporate bond trade data. While the NASD agrees that competition is an important goal, the NASD believes that the Commission and Congress have long recognized that in the area of collection, consolidation, and dissemination of market data information, other factors, such as equality of access, reasonableness of fees, and sufficient system capacity and security, are equally important.

#### b. Trade Comparison

Some commenters expressed concern that the proposal would mandate that all corporate bond trade comparison take place within TRACE. Among other things, commenters objected to mandated comparison through TRACE because, they argued, it would result in Nasdaq having an exclusive franchise over the provision of comparison services for corporate bond trades.

The NASD believes that the proposal to require mandatory comparison through TRACE was intended to ensure that the corporate bond trade data reported to and disseminated by the NASD was as accurate as possible, as evidenced by the acceptance of the trade by both parties. In addition to the fact that the NASD, not Nasdaq, will own and control TRACE, to further alleviate concerns expressed by the commenters, the NASD proposes to delete the TRACE Rules regarding trade comparison. (The NASD also proposes to delete the risk management provisions contained in the initial proposal.) Although NASD plans to offer voluntary comparison services to NASD members, firms will be free to select other entities to compare their transactions in TRACE-eligible securities. The NASD represents that elimination of mandatory comparison through TRACE will provide an opportunity for other entities to offer competing value-added comparison services for fixed income transactions.

As a result of Amendment No. 2, both compared and un-compared corporate bond trade data will be disseminated by the NASD. The NASD represents that it will amend the proposal further to require TRACE participants, whether reporting or non-reporting members, to provide to the NASD the same data on TRACE-eligible securities transactions that is provided to the member's registered clearing agency, within the same time frame, and, to the extent possible, in the same format. (Proposed TRACE Rule 6231.) This requirement is in addition to a member's obligation, if any, to report a fixed income transaction on a real-time basis under proposed TRACE Rule 6230. The NASD believes that this will improve considerably the quality of the data for surveillance purposes, while imposing minimal additional burdens on the firms.

#### c. Collection and Dissemination of TRACE Data

The NASD originally proposed a reporting plan that began first with high yield and convertible debt securities, followed by an alphabetical phase-in of all other TRACE-eligible corporate bonds. The initial time frame proposed for reporting trades would be no later than 1 hour after trade execution, which subsequently would be reduced to 15 minutes. After a brief start-up period during which the NASD would conduct a data integrity review, all eligible trade reports received would thereafter be disseminated immediately, subject to TRACE's proposed limitations on reporting the actual size of large

transactions to the public through data vendors.

Some commenters raised concerns that this plan failed to take into account the potential negative impact on liquidity that immediate dissemination of bond transaction reports could have on smaller, less-activity traded issues. Additional concerns were raised regarding likely confusion relating to trade reporting obligations in a plan that involved multiple phases and categories of fixed income securities. In response, the NASD has determined to propose a new phase-in methodology. Under this new approach, a member's obligation to report and the NASD's initial dissemination of reports in TRACE-eligible securities will take place as follows:

#### *Phase I—Three Months in Length*

- NASD members will be required to report *all* transactions in TRACE-eligible securities within 1 hour of trade execution.

- NASD will immediately disseminate transaction reports to the public and data vendors of all transactions in publicly offered, investment grade corporate bonds having an initial issuance of \$1 billion or greater. If applicable, these reports will be disseminated using the large volume trade dissemination cap identifiers (*i.e.*, "1MM+" for high yield securities and "5MM+" for investment grade corporate bonds) that were proposed in NASD's original TRACE filing.

- Transaction reports in the high yield debt securities denominated as the "FIPS 50" at the time of filing becomes effective will also be disseminated—also using the "1MM+" large volume trade dissemination cap identifiers.

- The BTRC will commence its examination of the impact of TRACE's transaction dissemination on liquidity. By the end of Phase I (three months after the start of TRACE reporting), the BTRC will provide its recommendations for appropriate dissemination protocols covering those investment grade bonds, starting with the largest issuance size, that, when combined together, make up the top 50% (by dollar volume) of such bonds.

#### *Phase II—Six Months in Length*

- NASD members will continue to be required to report *all* transactions in TRACE-eligible securities within 1 hour of trade execution.

- NASD will disseminate transaction reports to the public and data vendors of all transactions in the top 50% (by dollar volume) of investment grade bonds consistent with the

recommendations of the BTRC (subject to the approval of the NASD Board and the SEC.<sup>6</sup> If applicable, these reports will be disseminated, subject to using the large-volume trade dissemination cap identifiers (*i.e.*, "1MM+" for high yield securities and "5MM+" for investment grade securities) that were proposed in NASD's original TRACE filing.

- Three months after the start of Phase II (six months after the start of TRACE reporting), the 1 hour maximum time period to submit TRACE trade reports will be reduced to 15 minutes, subject to the ability of firms to comply technologically and operationally.

- Transaction reports in the "FIPS 50" will continue to be disseminated—also using the large volume trade dissemination cap identifiers (*i.e.*, "1MM+").

- The BTRC will continue its evaluation of the impact that dissemination of transaction information has on liquidity. By the end of Phase II (9 months after the start of TRACE reporting), the BTRC will provide recommendations for appropriate dissemination protocols for all remaining TRACE issues eligible for public dissemination.

During all phases, the NASD represents that the BTRC continually will evaluate industry technological readiness with a view to reducing further the post-execution deadlines for submitting trade reports to TRACE. The NASD believes that this new approach to collecting and disseminating real-time market data draws an appropriate balance between the Commission's desire for quick and measurable progress in improving transparency in the corporate bond market and industry concerns about liquidity. Moreover, the NASD believes that the new approach captures more information for regulatory purposes in a shorter time frame than under NASD's earlier TRACE transaction reporting plan. In turn, the NASD believes that the new approach will allow it to more quickly to develop and refine its surveillance plan for the fixed income market.

<sup>6</sup> Trade reports for Rule 144A securities will not be considered as part of the total average daily volume of the TRACE system for purposes of Phase II. In addition, the NASD notes that the proposed Phase II formula will result in an overlap with Phase I securities that may reduce the number of newly disseminated bonds in the second phase. The NASD represents that it will ask BTRC to review the Phase II dissemination formula in more detail to determine if a different approach to expanding the universe of disseminated bonds in Phase II is appropriate.

#### *d. TRACE Data*

Many commenters raised concerns that TRACE would grant the NASD exclusive control over corporate bond trade data. The NASD, in response to concerns raised regarding such exclusive control, intends to register as an ESIP under Section 11A of the Act. The NASD states that, as explained in the SEC's release entitled *Regulation of Market Information Fees and Revenues*,<sup>7</sup> in furtherance of national market system goals, the SEC recognizes the structure in which one central information processor receives and consolidates market "information into a single stream for dissemination to the public."<sup>8</sup> Regarding this consolidated data stream, the NASD notes that the SEC stated, "the practical effect of comprehensive federal regulation of market information is that proprietary interests in this information are subordinated to the Exchange Act's objectives for a national market system."<sup>9</sup>

The NASD represents that the SEC exercises oversight over the information consolidator by requiring registration of the consolidator as an ESIP under Section 11A of the Act, and regulating the registered ESIP's conduct. Under Section 11A, the NASD, as the registered ESIP, will be obligated to deliver market information on terms that are fair and reasonable, and to meet all other obligations imposed on ESIPs, including capacity, redundancy, audit trail, and surveillance capabilities. The NASD represents that it will be solely responsible for establishing rules and fees related to the sale of real-time data dissemination, subject to SEC oversight Nasdaq, which will not be the ESIP, will not possess any ownership rights in TRACE data, and will not exercise any control over the TRACE project. Nasdaq's role will be that of a contractor, providing to the NASD the collection and dissemination systems that will enable the NASD to perform its SRO functions.

#### *e. Implementation Schedules*

The NASD states that it has discussed TRACE's implementation with various members, vendors, and industry groups to understand the likely amount of time necessary to implement the regulatory reporting and transparency aspects of TRACE. After discussions with corporate bond market participants, the NASD represents that it has determined to modify its original filing and seek

<sup>7</sup> Securities Exchange Act Release No. 42208 (Dec. 9, 1999), 64 FR 70613 (Dec. 17, 1999).

<sup>8</sup> 64 FR 70613, 70615.

<sup>9</sup> *Id.*



SEC approval to begin phase I of TRACE 180 days following SEC approval of the service. The NASD believes that this additional time will allow its members to better prepare for the advent of TRACE trade reporting as well as give the NASD sufficient time to more fully test TRACE technology.

**f. T+1 Clearance and Settlement and STP Issues**

Many commenters raised concerns about how TRACE fits into ongoing industry initiatives to facilitate a T+1 clearance and settlement cycle anticipated in 2004 and later, straight-through processing (STP). The NASD believes that TRACE provides significant tools to the fixed income industry to assist them in moving to a T+1 settlement cycle. The NASD represents that when implemented, TRACE's real-time comparison and forwarding features will give market participants a fast, efficient way to enter their "locked-in" trade reports into the trade processing system and allow for faster settlement. The NASD believes that TRACE's open system architecture provides multiple ways of entering trade reports and also ensures that these powerful tools will be available to all firms regardless of size. The NASD represents that it is committed to the concept of interoperability between its systems and others operated by national and international clearing entities. In the final analysis, however, it believes that the pressing need for improved transparency in the corporate bond market cannot be subordinated to the much more complex and long-term goals of global straight-through processing. The NASD represents that it will continue to take action to ensure that its systems remain the most flexible and open possible, as well as being capable of quickly and efficiently adapting to whatever STP standards and protocols are adopted in the future.

**g. Addition of a Yield Value to TRACE Trade Reports**

As a result of further internal NASD review regarding the proper elements of a fixed income transaction report, the NASD has determined to add a yield requirement to TRACE trade reports. The NASD believes that the addition of a yield value, determined in conformity with Rule 10b-10 under the Act, provides a valuable mechanism to match, verify, and analyze pricing of corporate bonds. The NASD notes that firms are already required to provide this information to customers as part of the transaction confirmation process and believes that any additional burden on firms to enter such information is

more than offset by the regulatory value of such information. Specifically, the NASD represents that yield information will enable the NASD to identify potentially erroneous fixed income transactions on a real time basis, thereby promoting the integrity of the transactions reports.

The NASD's principal goal in developing TRACE is to meet the mandate of the SEC to provide greater transparency to investors and to enhance the NASD's regulatory oversight of corporate bond trading. The NASD believes it has responded in a flexible and proactive manner to various industry concerns regarding TRACE.

**2. Statutory Basis**

The NASD represents that it believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that the NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, to protect investors and the public interest.

The NASD states that the proposed rule change, if approved, will establish rules for the reporting and dissemination of information on fixed income transactions that will provide the NASD, as the self-regulatory organization designed to regulate the over-the-counter markets, with heightened capabilities to regulate the fixed income markets in order to prevent fraudulent and manipulative acts and practices. The NASD also represents that the proposed structure to collect the information, with the NASD as the proposed exclusive securities information processor under Section 11A of the Act, is consistent with other information processing structures that have been proposed and approved by the SEC, and will foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to fixed income securities and among persons facilitating transactions in fixed income securities. Finally, the NASD believes that the proposed rule change, by requiring reporting and dissemination of such transaction information, will protect investors and the public interest by, among other things, increasing transparency in the fixed income market.

**(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 35 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 90 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 self-regulatory organization 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 Amendment Nos. 2 and 3, including whether Amendment Nos. 2 and 3 are 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, 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 the NASD. All submissions should refer to Amendment Nos. 2 and 3 to file number NASD 99-65 and should be submitted by December 20, 2000.



For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00-30452 Filed 11-28-00; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43606; File No. SR-NSCC-00-05]

### Self-Regulatory Organizations; National Securities Clearing Corporation; Order Granting Accelerated Approval of a Proposed Rule Change Relating to Processing Mutual Fund Services

November 21, 2000.

On April 7, 2000, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-NSCC-00-05) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and on April 19, 2000, and May 8, 2000, amended the proposed rule change to modify its rules to allow additional types of investment products to be processed through NSCC's Mutual Fund Services. Notice of the proposal was published in the **Federal Register** on October 23, 2000.<sup>2</sup> Two comment letters were received from one commenter.<sup>3</sup> For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

#### I. Description

Several NSCC participants who utilize NSCC's Defined Contribution Clearance and Settlement Service of NSCC's Mutual Fund Services have requested that NSCC permit additional types of investment products regulated under state insurance laws or federal or state banking laws to be eligible for processing through NSCC's Mutual Fund Services. Examples of such investment products include stable value funds, separate account group guaranteed investment contracts (which

are regulated as group annuities), and bank collective investment trusts.

To accommodate their participants' request, NSCC will create a new class of securities defined as Investment Funds. Pursuant to the rule filing NSCC will: (1) Add Investment Funds as a class of securities eligible for processing through Mutual Fund Services; (2) make corresponding changes to the rules relating to the entities eligible to process Investment Funds transactions through the Mutual Fund Services; (3) establish standards of financial responsibility and operational capability for those participants wishing to process Investment Funds through NSCC's Mutual Fund Services; and (4) make conforming changes to the existing rules where necessary.

Investment Funds will be defined as any fund or investment entity that is subject to regulation under applicable federal and state banking and/or insurance laws. Investment Funds will include such things as bank collective investment trusts, separate account guaranteed investment contracts, and other similar pooled investment vehicles. All Invested Fund products will be subject to regulation under federal or state banking laws or state insurance laws. Only Investment Funds that have been assigned a CUSIP number would be eligible for processing through NSCC's Mutual Fund Services.

For the purpose of processing transactions in Investment Funds, NSCC also will expand the types of entities that may qualify as a Fund Member under Rule 51 of NSCC's Rules so that insurance companies, banks, and trust companies as packagers and sponsors of such funds may apply to become a Fund Member. As with other entities seeking to become Fund Members, any of these new eligible entities seeking to process Investment Fund transactions through NSCC's Mutual Fund Services will be required to enter into an agreement with NSCC that sets forth the entity's rights and obligations as a Fund Member, including that it will limit its use of NSCC's services to use of Mutual Fund Services (or Insurance Processing Services, as the case may be), it will comply with NSCC's rules and procedures, and will permit NSCC to inspect its books and records. Moreover, as with all other transactions in Mutual Fund Services, transactions involving Investment Funds will not be guaranteed by NSCC. As currently provided in NSCC's Rules, if one side fails to pay for a transaction, the contra side will be required to return to NSCC any funds received from NSCC.<sup>4</sup>

Under the rule change, NSCC's Rule 2 will be amended to permit an insurance company to become a mutual fund member or insurance services member in order to transmit Investment Fund Purchases, exchanges, and redemption orders to a fund member and to engage in other customer-related transactions with a funds member. In addition to the standards of financial responsibility and operational capability set forth in Addenda B and I of NSCC's Rules currently applicable to Mutual Fund Service members, insurance services members, and Fund Members, entities seeking to process Investment Fund transactions through Mutual Fund Services will be required to meet the rating and capital requirements set forth in new Addendum V, Financial Standards for Applicants and participants Processing investment Funds Transactions Through Mutual Fund Services.

Since NSCC will make a new category of securities eligible for Mutual Fund Services processing, the rule change will also make conforming changes to certain existing rules in order to include a reference to Investment Funds as applicable.

NSCC believes the proposed rule change is consistent with Section 17A of the Act because it will make a new class of products eligible for processing through NSCC's Mutual Fund Services and thereby should facilitate the prompt and accurate clearance and settlement of these transactions in these products.

#### II. Discussion

Section 17A(b)(3)(F)<sup>5</sup> of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and 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. The primary purpose of NSCC's rule change is to expand the types of products processed by and the types of entities processing through NSCC's Mutual Fund Services that should facilitate the prompt and accurate clearance and settlement of transactions in these instruments. Investment products such as Investment Funds are typically included in defined contribution retirement plans and thus their inclusion in Mutual Fund Services should benefit third party administrator ("TPA") members and other participants by standardizing the processing of these Investment Funds in the same manner as mutual funds are now processed in NSCC's Mutual Fund

<sup>10</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> Securities Exchange Act Release No. 43447 (October 16, 2000), 65 FR 63278 (October 23, 2000).

<sup>3</sup> Letters from Harold H. Morley, Chairman and Chief Executive Officer, Morley Financial Services, Inc., to Jonathan G. Katz, Secretary, Commission (May 10, 2000); Joan K. Hall, Senior Vice President and Director, Morley Financial Services, Inc., to Jonathan G. Katz, Secretary, Commission (August 15, 2000).

<sup>4</sup> Addendum D of NSCC's Rules and Procedures.

<sup>5</sup> 15 U.S.C. 78q-1(b)(3)(F).