

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹⁵

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Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48846; File No. SR-NSCC-2003-21]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to the New Separately Managed Accounts Service

November 26, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on October 16, 2003, the National Securities Clearing Corporation ("NSCC") 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 primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The proposed rule change would add a new Rule 59 to NSCC's Rules to establish an information messaging system called the Separately Managed Accounts ("SMA") Service.

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

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.²

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

The SMA Service will provide a messaging hub for the communication of information among sponsors of separately managed accounts and the investment managers participating in their programs.³ At year-end 2002, the managed account industry had approximately 2 million accounts with approximately \$398 billion in assets under management. It is estimated to increase to 5.3 million accounts and \$930 billion in assets under management by 2006.⁴

Currently, communication of information among sponsors and investment managers and other participants in the managed account industry is supported by a combination of methods such as multiple proprietary vendor and sponsor applications and platforms supplemented by faxes, emails, and telephone communication. It was the consensus of industry representatives through their participation in the MMI that this current operational infrastructure, which depends upon nonstandard and manual processing over multiple platforms, could not support the projected growth and even at the current levels has resulted in excessive processing costs, delays, and errors.

Accordingly, the MMI commissioned a study of the operational interfaces in the separately managed account industry. This study noted the lack of standardized protocols and processes and centralized connectivity as the major areas of operational concern, and concluded that these inefficiencies could be expected to result in errors with an adverse economic impact. The authors of the study recommended to the MMI that the industry look beyond its current technology and operations

³ Separately managed accounts are generally described as professionally managed individual investment portfolios offered to investors such as high net worth individuals. The investor's assets are managed in separate accounts by a sponsor or its custodian that typically contracts with multiple investment managers to provide a diversified investment strategy for the investor. The investor is generally charged an asset-based fee in lieu of commissions and other fee arrangements. Information about the separately managed account industry is available on the Web site of The Money Market Institute ("MMI") at <http://www.moneyinstitute.com>. The MMI is the national organization for the managed account industry, comprised mostly of portfolio management firms and sponsors of investment advisory and consulting services.

⁴ The industry forecasts were developed by the Financial Research Corporation with the cooperation of the MMI through analysis of data provided by MMI members.

platforms to seek an industry-wide approach that would allow the SMA industry to achieve the type of standardized and centralized processing accomplished by the mutual fund industry over the last twenty years.⁵

In response to the operational issues facing the managed account industry and recognizing the benefits that NSCC's mutual fund services provide to the mutual fund industry, in early 2002 the MMI asked NSCC to explore whether NSCC could provide services with similar operational benefits to the separately managed accounts industry, with the view of increasing operational efficiency and decreasing operational risks inherent in the current processing structure. At the request of the MMI, NSCC was subsequently invited to work with the MMI's Technology/Operations Committee and to work with industry representatives to create business communications standards for sponsor firms and investment managers and to develop a message processing utility that would support the standards when published. The initial standards, addressing new account set up, account termination, and account deposits and withdrawals, were delivered to the industry in late 2002. These standardized data elements are available to all vendors, sponsors, and managers to use in programming their various applications.⁶

At the invitation of the MMI, NSCC initiated the SMA Service project development work to assess the feasibility of offering the SMA Service. A prototype of the SMA Service system was made available for industry testing and feedback in January 2003. On May 21, 2003, DTCC presented the proposed service to MMI's Board of Governors and the presentation was well received. On September 4, 2003, NSCC's Board of Directors approved the proposed rule change.

Pending approval of the Commission, the SMA Service will be available for use by members, fund members, and data services only members. As in the case with all NSCC products, NSCC will allow vendors to build interfaces to

⁵ "Operational Interfaces in the Separately Managed Account Industry," Deloitte & Touche, published by The Money Management Institute, August 2002. See also, "2010: A Managed Account Odyssey: Projections in the Future of the Managed Account Industry," Leonard A. Reinhart and Jay N. Whipple III © 2002 Lockwood Financial Services, Inc., also equating the current operational infrastructure of the managed account industry to that of the mutual fund industry prior to the implementation of NSCC's mutual fund services.

⁶ The standardized data elements are available on the Web site of the MMI at <http://www.moneyinstitute.com> and NSCC at <http://nsc.com>.

¹⁵ 17 CFR 200.30-3(a)(75).

¹ 15 U.S.C. 78s(b)(1).

² The Commission has modified parts of these statements.

NSCC's SMA Service on behalf of NSCC members.

Messages transmitted through the SMA Service will consist of information such as account opening data (e.g., account profile notifications, verifications of funding amounts, and authorizations to trade) and account maintenance data (e.g., funding deposit amount notifications, funding withdrawals, and account termination notifications). NSCC will not be responsible for the content of the messages transmitted through the SMA Service nor will NSCC assume any liability for the completeness or accuracy of the information transmitted.

The SMA Service will provide centralized platform for the communication of the basic account opening and maintenance data among sponsors and investment managers. Because the service does not involve money settlement or securities clearance or netting through the facilities of NSCC, it will be a nonguaranteed service of NSCC.⁷

Fees for the use of the SMA Service will be the subject of a separate rule filing.

Establishing the SMA Service at NSCC will facilitate the transmission of standardized information for separately managed accounts products on a centralized communications platform. Standardization and automation on these products can be expected to reduce processing errors and delays that are typically associated with manual processes or the use of multiple platforms and methods to transmit information. This fosters cooperation and coordination with persons engaged in the clearance and settlement of securities transactions and furthers the protections of investors and the public interest. The proposed rule change is therefore consistent with the provisions of the Act and the rules and regulations thereunder.

⁷ NSCC offers certain guaranteed services through its CNS system, in which NSCC as a central counterparty provides settlement related guarantees regarding certain trades cleared and netted at NSCC. NSCC also offers nonguaranteed services, such as NSCC's Mutual Fund and Insurance Processing Services, in which members do not receive the protections of an NSCC guarantee. Some of NSCC's nonguaranteed services entail settlement of funds through NSCC (e.g., NSCC's FundSERVE® service); other nonguaranteed services involve the communication of information only without settlement of transactions or funds through the facilities of NSCC (e.g., NSCC's Profile service in NSCC's Mutual Fund Services). The SMA Service is a nonguaranteed service limited to the communication of information only and does not involve settlement of securities transactions or funds through the facilities of NSCC.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

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

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (a) By order approve the 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 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. Comments may also be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR-NSCC-2003-21. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference

Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of NSCC and on NSCC's Web site at <http://www.nsccl.com/legal/>. All submissions should refer to the File No. SR-NSCC-2003-21 and should be submitted by December 24, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48835; File No. SR-CSE-2003-06]

Self-Regulatory Organizations; Order Granting Partial Approval of Proposed Rule Change and Amendment No. 2 Thereto and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Thereto by National Stock Exchange Relating to Audit Committee Requirements Applicable to Companies Listing Non-Option Securities

November 25, 2003.

I. Introduction

On September 12, 2003, the Cincinnati Stock Exchange, now known as National Stock Exchange ("Exchange"), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Article IV of its By-Laws pertaining to its listing standards, including the addition of requirements applicable to audit committees of listed companies.³ The proposed rule change would require each issuer listed on the Exchange to have an audit committee that complies with the standards for audit committees mandated by Section 10A(m) of the Act⁴ and Rule 10A-3 thereunder.⁵ The proposed rule change also would specify composition and member qualification requirements for

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ In the proposed rule change, the Exchange also proposed to amend Article IV, Section 2 of the Exchange's By-Laws pertaining to unlisted trading privileges. The Commission is not approving this amendment at this time.

⁴ 15 U.S.C. 78j-1(m).

⁵ 17 CFR 240.10A-3.