

In its Order approving the September 1995 Amended SOES Rules, the Commission noted its concern about the potential for delayed and/or inferior executions. In that regard, the Commission stated that it expected the NASD to monitor the extent to which exposure limits are exhausted, the extent to which the automated quotation update feature is used, and the effects of these two aspects on liquidity. Moreover, the Commission stated that it expected the NASD to consider the possibility of enhancements to eliminate the potential for delayed and/or inferior executions. The NASD, therefore, submitted a report in response to the Commission's requests.<sup>15</sup>

In the Monitoring Report, the NASD found that from October 2, 1995 to November 22, 1995, the average daily number of occurrences of SOES exposure limits being exhausted was eighty-three.<sup>16</sup> The NASD stated that relative to the average number of market making positions on the Nasdaq National Market, the average is equivalent to 0.0019 occurrences per market making position per day or 0.0211 occurrences per stock per day.<sup>17</sup> The NASD concluded that, based on these numbers, the impact of exhaustions on liquidity is negligible.<sup>18</sup>

The NASD also supplied data regarding the automated quotation update feature in the Monitoring Report. The NASD stated that the average daily number of updates using the Nasdaq automated quotation update feature over the period was 3,394.<sup>19</sup> The NASD reported that as of November 21, 1995, the automated quotation update feature was used by 126 market makers for 10,644 market making positions, or 26 percent of all active market makers and 24 percent of all Nasdaq National Market market making positions.<sup>20</sup>

With regard to the Commission's request that the NASD consider the

possibility of enhancements to SOES in order to eliminate the potential for delayed and/or inferior executions, the NASD, in its Monitoring Report, stated that the average delay between a SOES market order entry and order execution is 1.62 seconds.<sup>21</sup> The NASD concluded that such delays do not appear to warrant enhancements to SOES.

In further support of its proposal, the NASD continues to rely on the same arguments and justifications previously submitted to the Commission in support of the amendments to SOES. In the orders approving the January 1995, March 1995, and September 1995 Amended SOES Rules, however, the Commission expressed its belief that the data submitted by the NASD was inconclusive, demonstrating neither significant improvement to nor serious deterioration in the quality of the Nasdaq market subsequent to the adoption of the January 1994 Amended SOES Rules.<sup>22</sup> The information submitted by the NASD since its initial study, including the Monitoring Report, does not alter the Commission's original assessment. The Commission, therefore, continues to believe that the data submitted by the NASD demonstrates neither a significant improvement to nor serious deterioration in the quality of the Nasdaq market as a result of the adoption of the January 1994, January 1995, March 1995, and September 1995 Amended SOES Rules.<sup>23</sup> Moreover, the Commission believes this is true whether the amended SOES rules are viewed collectively or individually. Thus, the Commission finds the data submitted by the NASD to be inconclusive. For the reasons discussed above, however, the Commission has determined to approve the proposal to extend the September 1995 Amended SOES Rules through July 31, 1996.

#### IV. Conclusion

As indicated above, the Commission has determined to approve the extension of the SOES Minimum Exposure Limit Rule and the SOES Automated Quotation Update Feature through July 31, 1996. In light of the balance of factors described above, the Commission believes extension of the reduction in the minimum exposure limit, the limitation of the exposure

limit to unpreferred orders, and the addition of an automation quotation update feature are consistent with the Act.

The Commission, in the exercise of the authority delegated to it by Congress, and in light of its experience regulating securities markets and market participants, has determined that approval of these changes to the SOES Rules until July 31, 1996 is consistent with maintaining investor protection and fair and orderly markets, and that these goals, on balance, outweigh possible anti-competitive effects on order entry firms and their customers.

Accordingly, the Commission finds that the rule change is consistent with the Act and the rules and regulations thereunder applicable to the NASD and, in particular, Sections 15A(b)(6), 15A(b)(9), and 15A(b)(11). In addition, the Commission finds that the rule change is consistent with the Congressional objectives for the equity markets, set out in Section 11A, of achieving more efficient and effective market operations, fair competition among brokers and dealers, and the economically efficient execution of investor orders in the best market.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof in the Federal Register. In addition to the reasons discussed in this order, the Commission believes that accelerated approval of the NASD's proposal is appropriate given the fact that the proposal is an extension of the amended SOES Rules that have been in effect since March 1995; that the information presently before the Commission leads to the conclusion that the current minimum exposure limit and automated quotation update function are appropriate features for SOES while the Commission considers the NASD's NAQcess proposal; and that without Commission action on or before January 31, 1996, the SOES rules would revert to those in effect prior to January 1994, resulting in a temporary lapse in continuity.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the instant rule change SR-NASD-95-60 be, and hereby is, approved, effective February 1, 1996 through July 31, 1996.

By the Commission,  
Margaret H. McFarland,  
*Deputy Secretary*.  
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<sup>15</sup> Monitoring Report of Exhaustion of SOES Exposure Limits and the Usage of Nasdaq Automated Quotation Update Feature, NASD Economic Research Department, December 18, 1995 ("Monitoring Report").

<sup>16</sup> The high was 119 occurrences on November 21, 1995, and the low was 47 occurrences on October 4, 1995.

<sup>17</sup> These averages were based on averages of 44,062 market maker positions and 3,932 securities per day.

<sup>18</sup> The NASD also noted that even when an exhaustion occurred, it is likely that other market makers were at the inside quote to provide liquidity to SOES orders.

<sup>19</sup> The high was 5,376 on October 10, 1995 and the low was 2,157 on October 4, 1995.

<sup>20</sup> The NASD noted that these numbers do not take into account any internal automated quotation update systems that individual market making firms may employ and therefore, overall automated quotation update usage on Nasdaq is greater than the NASD's calculations demonstrate.

<sup>21</sup> The NASD noted that the maximum delay for a recent day was 87 seconds.

<sup>22</sup> See Securities Exchange Act Release Nos. 35275 (Jan. 25, 1995), 60 FR 6327 (Feb. 1, 1995); 35535 (Mar. 27, 1995), 60 FR 16690 (Mar. 20, 1995); 36311 (Sept. 29, 1995), 60 FR 52438 (Oct. 6, 1995).

<sup>23</sup> Nonetheless, the Commission continues to be interested in data and studies demonstrating the effect, if any, of the SOES rule changes on the Nasdaq market.

[Release No. 34-36790; File No. SR-PTC-95-09]

**Self-Regulatory Organizations; Participants Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Declaring a Dividend**

January 30, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on December 28, 1995, the Participants Trust Company ("PTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-PTC-95-09) as described in Items I, II, and III below, which Items have been prepared primarily by the self-regulatory organization. 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 declares a dividend payable on December 29, 1995, to PTC's stockholders of record as of December 21, 1995.

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

In its filing with the Commission, PTC 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. PTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.<sup>2</sup>

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

As a condition to approving PTC's application for stock in the Federal Reserve Bank of New York, the Board of Governors of the Federal Reserve System ("Board of Governors") prohibited PTC from paying dividends to its stockholders.<sup>3</sup> The Board of Governors subsequently relieved PTC of the restriction on payment of dividends

with the understanding that dividends, if declared, would be declared periodically by PTC's Board of Directors and would be paid at a rate not to exceed the 90-day United States Treasury bill rate in effect at the time the dividend is declared.<sup>4</sup>

The Commission approved PTC's practice of paying dividends out of net profits subject to the limitations imposed by the Board of Governors and subject to the further requirements that (i) prior to using excess income from invested principal and interest ("P&I") to pay a dividend, PTC's Board of Directors be advised of any amount related to the investment of P&I which has not been rebated and is part of the net profits used to declare the dividend and affirmatively approve the application of such excess P&I income for the dividend and (ii) PTC file a proposed rule change pursuant to Section 19(b)(3)(A) of the Act each time it declares a dividend.<sup>5</sup>

PTC has paid dividends on January 18, 1993, in the amount of \$.52 per share to stockholders of record as of the close of business on December 31, 1992,<sup>6</sup> on January 20, 1994, in the amount of \$.525 per share to stockholders of record as of the close of business on December 31, 1993,<sup>7</sup> and on January 20, 1995, in the amount of \$1.00 per share to stockholders of record as of the close of business on December 31, 1994.<sup>8</sup> At its meeting on December 21, 1995, PTC's Board of Directors declared a dividend payable on December 29, 1995, in the amount of \$.98 per share to stockholders of record as of the close of business on December 21, 1995. This dividend rate does not exceed the 90-day United States Treasury bill rate in effect on December 21, 1995.<sup>9</sup> The dividend does not include any excess income attributable to investments of P&I as all such P&I related income with respect to fiscal year ended December

31, 1995, will be rebated to participants on a *pro rata* basis based on the amount of P&I disbursements to each participant.

PTC believes that the proposed rule change is consistent with Section 17A(b)(3)(D) of the Act<sup>10</sup> and the rules and regulations thereunder in that it provides for the equitable allocation of reasonable fees and other charges among participants.

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

PTC does not believe that the proposed rule change will impose any burden on competition 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**

PTC has not solicited comments with respect to the proposed rule change, and none have been 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)(i) of the Act<sup>11</sup> and subparagraph (e)(1) of Rule 19b-4<sup>12</sup> thereunder because the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization. At any time within sixty days of the filing of such 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.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. 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

<sup>4</sup> Letter from Jennifer J. Johnson, Associate Secretary to the Board, Board of Governors, to Leopold S. Rassnick, Vice President and General Counsel, PTC (June 9, 1992). The State of New York Banking Department subsequently removed its restriction on the payment of dividends. Letter from Carmine M. Tenga, Deputy Superintendent of Banks, State of New York Banking Department, to Leopold S. Rassnick, Vice President and General Counsel, PTC (December 21, 1992).

<sup>5</sup> Securities Exchange Act Release No. 31746 (January 15, 1993), 58 FR 6319 [File No. SR-PTC-92-15].

<sup>6</sup> *Id.*

<sup>7</sup> Securities Exchange Act Release No. 33487 (January 18, 1994), 59 FR 3900 [File No. SR-PTC-93-07].

<sup>8</sup> Securities Exchange Act Release No. 35205 (January 9, 1995), 60 FR 3444 [File No. SR-PTC-94-08].

<sup>9</sup> The 90-day United States Treasury bill rate, as published in *The Wall Street Journal* on December 21, 1995, was 5.13%.

<sup>10</sup> 15 U.S.C. § 78q-1(b)(3)(D) (1988).

<sup>11</sup> 15 U.S.C. § 78s(b)(3)(A)(i) (1988).

<sup>12</sup> 17 CFR 240.19b-4(e)(1) (1995).

<sup>1</sup> 15 U.S.C. § 78s(b)(1) (1988).

<sup>2</sup> The Commission has modified the text of the summaries prepared by PTC.

<sup>3</sup> Letter from William W. Wiles, Secretary of the Board, Board of Governors, to Thomas A. Williams, Milbank, Tweed, Hadley & McCloy (March 27, 1989).

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 PTC. All submissions should refer to File No. SR-PTC-95-09 and should be submitted by February 27, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>13</sup>

Margaret H. McFarland,

*Deputy Secretary.*

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[Release No. 34-36791; International Series Release No. 925; File No. Sr-ISCC-95-05]

**Self-Regulatory Organizations; International Securities Clearing Corporation; Order Approving Proposed Rule Change Relating to Global Clearance Network Service**

January 30, 1996.

On November 22, 1995, International Securities Clearing Corporation ("ISCC") filed a proposed rule change (File No. SR-ISCC-95-05) with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> Notice of the proposal was published in the Federal Register on December 27, 1995, to solicit comments from interested persons.<sup>2</sup> No comments were received. As discussed below, this order approves the proposed rule change.

**I. Description**

ISCC has established a foreign clearance, settlement, and custody service known as a Global Clearance Network ("GCN") in conjunction with certain banks, trust companies, and other entities. Presently, ISCC has established GCN relationships with Citibank, N.A., Standard Bank of South Africa, Westpac Custodian Nominees Limited of Australia, and Westpac Nominees-NZ-Limited.<sup>3</sup> The proposed rule change accommodates S.D.

INDEVAL, S.A. de C.V. ("INDEVAL") as an additional GCN service provider.

INDEVAL provides clearance, settlement, and custodial services for all transactions executed on the Mexican Stock Exchange and for transactions in other securities that are publicly traded in Mexico.<sup>4</sup> INDEVAL accepts any security publicly offered in Mexico for custody and clearing except for certain Mexican government securities.<sup>5</sup> As of December 31, 1994, 415 institutions were registered with INDEVAL, and the value of assets under INDEVAL's custody was 744.2 billion Mexican pesos. INDEVAL may act as an eligible foreign custodian under Rule 17f-5 under the Investment Company Act of 1940.<sup>6</sup>

INDEVAL has entered into an agreement with ISCC pursuant to which INDEVAL has agreed to provide access to its clearance, settlement, and custody services to GCN participants that qualify to be customers of INDEVAL.<sup>7</sup> ISCC has developed a cross-broker communication link to INDEVAL using the telecommunication system provided by the Society for Worldwide Interbank Financial Telecommunications S.C. ("SWIFT"). The link permits ISCC members that also are members of INDEVAL to send instructions through ISCC to INDEVAL regarding such participants' INDEVAL accounts. The link does not provide a mechanism for transferring securities or funds into or out of the United States. INDEVAL is providing the services at its scheduled rates and is responsible for collecting fees directly from the participants.

**II. Discussion**

The Commission believes the proposal is consistent with the

<sup>4</sup> INDEVAL was created under Mexican securities law in 1978 and has been privately owned since 1987. Its shareholders are brokerage houses, banks, insurance companies, Banco de Mexico (the central bank of Mexico), and the Mexican Stock Exchange. INDEVAL is regulated by the Government of Mexico.

<sup>5</sup> Starting in April 1994, Banco de Mexico authorized INDEVAL to offer custodial and transfer services for government debt securities to foreign direct account depositors by means of a link between Banco de Mexico and INDEVAL.

<sup>6</sup> Letter from Richard F. Jackson, Division of Investment Management, Commission to INDEVAL, File No. 132-3 (October 19, 1990). An "eligible foreign custodian" includes a securities depository or clearing agency which is incorporated or organized under the laws of a country other than the United States and which operates the central system for handling of securities or equivalent book-entries in that country. 17 CFR 270.17f-5(c)(2)(iii) (1995).

<sup>7</sup> The agreement is terminable on ninety days prior notice. However, if ISCC notifies INDEVAL within such ninety day period that it has not been able to make arrangements with an alternative service provider, the agreement terminates thirty days after the expiration of such ninety day period.

requirements of Section 17A of the Act and therefore is approving the proposal.<sup>8</sup> In the initial order granting ISCC temporary registration as a clearing agency, the Commission stated that the development of efficient and comparable automated national and international clearance, settlement, and payment systems is one of the more important international goals.<sup>9</sup> The Commission noted that without established international systems, broker-dealers and their institutional customers often are forced to devote substantial resources to each task related to trade settlement and must deliver securities by physical means. The Commission also found that clearing linkages facilitate cross-border settlements without compromising the essential soundness and integrity of each national clearing and settlement system.

The GCN service offers participating ISCC members advantages in securities processing including central access for processing trades, standardized operating procedures, receipt of uniform reports on their trades, and reduced costs. The addition of INDEVAL as a GCN provider gives ISCC participants access to settlement services in areas not currently covered by the GCN service and thus increases the utility of the GCN service. Therefore, the Commission believes the proposal is consistent with Section 17A(b)(3)(F) of the Act in that it promotes the prompt and accurate clearance and settlement of securities transactions.<sup>10</sup>

**III. Conclusion**

For the reasons stated above, the Commission finds that ISCC's proposal is consistent with Section 17A of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (File No. SR-ISCC-95-05) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

Margaret H. McFarland,

*Deputy Secretary.*

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<sup>8</sup> 15 U.S.C. 78q-1 (1988).

<sup>9</sup> Securities Exchange Act Release 26812 (May 12, 1989), 54 FR 21691.

<sup>10</sup> 15 U.S.C. 78q-1(b)(3)(F) (1988).

<sup>11</sup> 15 U.S.C. 78s(b)(2) (1988).

<sup>12</sup> 17 CFR 200.30-3(a)(12) (1995).

<sup>13</sup> 17 CFR 200.30-3(a)(12) (1995).

<sup>1</sup> 15 U.S.C. 78s(b) (1988).

<sup>2</sup> Securities Exchange Act Release No. 36605 (December 20, 1995), 60 FR 67004.

<sup>3</sup> Securities Exchange Act Release Nos. 29841 (October 18, 1991), 56 FR 55960; 35392 (February 16, 1995), 60 FR 10415; and 36339 (October 5, 1995), 60 FR 53447.