

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

Margaret H. McFarland,

Deputy Secretary.

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## 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).

Services. Standardized processing should permit defined contribution plan administrators to provide Investment Fund products to defined contribution plan clients without the proprietary systems or manual processing infrastructure and related costs necessitated by the current processing methods.

In addition to the fact that transactions in Mutual Fund Services are not guaranteed, the rule change establishes standards of financial responsibility and operational capabilities for entities processing Investment Funds through NSCC's Mutual Fund Services. This should help NSCC assure the safeguarding of funds and securities which are in NSCC's control or for which it is responsible. Accordingly, the Commission finds that the rule change is consistent with NSCC's obligations under the Act.

NSCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication because accelerated approval will permit NSCC to expand the types of products processed by and the types of entities processing through NSCC's Mutual Fund Services, thereby extending the benefits of the Mutual Fund Services as soon as practicable.

### III. Conclusion

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

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-NSCC-00-05) be and hereby is approved. For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-43596; File No. SR-NYSE-00-43]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and of Amendment No. 1 to Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Revisions to the Floor Conduct and Safety Guidelines

November 20, 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 October 16, 2000, the New York Stock Exchange, Inc. ("Exchange" or "NYSE") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NYSE. On November 17, 2000, the NYSE filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change and Amendment No. 1 to 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 consists of an amendment to the Exchange's Floor Conduct and Safety Guidelines (the "Guidelines") with respect to policies and procedures pertaining to The Code of Personal Appearance. The Guidelines are a "stated policy, practice or interpretation" concerned with the administration of Exchange Rules 35 and 37. Below is the text of the proposed rule change. Proposed new language, as amended, is italicized and proposed deletions are in brackets.

\* \* \* \* \*

#### Floor Conduct and Safety Guidelines Chapter Thirteen: Floor Conduct and Safety Guidelines

1. Guidelines and Fines—The conduct of individuals on the Trading Floor of the New York Stock Exchange and on other premises under Exchange control

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

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

<sup>3</sup> See Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated November 16, 2000 ("Amendment No. 1"). In Amendment No. 1, the NYSE amended its rule language to add "and guests" to the first sentence under the heading "Female Personnel and Guests."

can significantly affect the public investor's image of the quality, fairness and professionalism of the Exchange [M]arketplace. In addition, the behavior of individuals can impact the safety and welfare of others and affect the efficient, uninterrupted conduct of business on the Floor, and on other premises under Exchange control. For these reasons, all persons, while on the Floor of the Exchange and on other premises under Exchange control shall not:

- Engage in any act or practice which may be detrimental to the interest or welfare of the Exchange; or
- Engage in any act or practice which may serve to disrupt or hinder the ordinary and efficient conduct of business; or
- Engage in any act or practice which may serve to jeopardize the safety or welfare of any other individual.

It is the responsibility of all members and Floor clerical employees of members or member organizations to be familiar with the following guidelines governing Floor conduct and safety throughout Exchange premises, and to be aware that the applicable penalties will be imposed where violations of these guidelines are found to have occurred. In addition, where substantial or continued violations of these guidelines occur, that individual will be subject to possible disciplinary action in accordance with the procedures set forth in the Exchange Constitution and Rules.

\* \* \* \* \*

Code of Personal Appearance—Members and employees of members and member organizations must conform to the revised Trading Floor Code of Personal Appearance. All garments must be reasonably pressed and not wrinkled.

#### Male Personnel

All male personnel are expected to wear suitable attire as follows: A dress shirt, buttoned at the collar, with a dress tie knotted at the customary place, *i.e.*, snug to the collar; full length dress trousers or slacks; JEANS or OTHER SPORT SLACKS ARE NOT PERMITTED; a jacket with long sleeves (An acceptable jacket shall include a suit, sport coat, blazer or SOLID COLOR office jacket. Any back or side panels or mesh back must be of same color as jacket or black.)

#### Male Guests

*Suit, Sport Coat or Work Jacket must be worn, but a tie is not required. A dress, collared golf/polo shirt or turtleneck is acceptable. T-Shirts, tank*

<sup>6</sup> 17 CFR 200.30-3(a)(12).