

longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD 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 the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR-NASD-2002-86 and should be submitted by September 10, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

Margaret H. McFarland,  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46337; File No. SR-NSCC-2002-04]

### Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Modifying NSCC's Rules to Accept Trade Input for Debt Security Trades Executed on the American Stock Exchange from its Members for Comparison Processing

August 12, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

("Act"),<sup>1</sup> notice is hereby given that on June 14, 2002, 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 will allow NSCC to accept directly from NSCC members for processing in NSCC's trade comparison service debt security trades executed on the American Stock Exchange ("Amex") that were previously reported to NSCC by the New York Stock Exchange's ("NYSE") Online Comparison System ("OCS").

#### 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.<sup>2</sup>

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

With the elimination of the use of OCS by the NYSE for debt security trades executed on the Amex, NSCC is modifying its rules in order to accept trade input for such trades from members for comparison processing. The proposed rule change will allow NSCC to process these trades in the same manner that it processes over-the-counter corporate bond trades submitted directly to it by its members for comparison. In addition, the proposed rule change reflects technical changes regarding (i) the use of Withhold tickets and (ii) the submission to NSCC of debt securities trades executed on the NYSE<sup>3</sup> to conform the rules to current practice.

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

<sup>2</sup> The Commission has modified parts of these statements.

<sup>3</sup> All debt security trades executed on the NYSE are now submitted to NSCC by the NYSE Automated Bond System.

This filing enables debt security trades executed on the Amex<sup>4</sup> to be submitted to NSCC in a cost efficient manner that is currently utilized by NSCC in connection with similar types of trades; therefore, NSCC believes it is consistent with the provisions of Section 17A of the Act, as amended, and the rules and regulations thereunder.

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

NSCC does not believe that the proposed rule change will impact 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

Because the foregoing rule change effects a change in an existing service of NSCC that (i) does not adversely affect the safe-guarding of securities or funds in the custody or control of the clearing agency or for which it is responsible, and (ii) does not significantly affect the respective rights and obligations of the clearing agency or persons using the service, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act<sup>5</sup> and Rule 19b-4(f)(4)<sup>6</sup> promulgated thereunder. At any time within sixty days of the filing of the proposed 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, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549-0609. Copies of the submission, all subsequent

<sup>4</sup> NSCC will also process other debt security trades that may have been previously submitted to NSCC via OCS if the trades are eligible to be processed in its Fixed Income Transaction System.

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

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

<sup>7</sup> 17 CFR 200.30-3(a)(12).

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 the NSCC. All submissions should refer to the File No. SR-NSCC-2002-04 and should be submitted by September 10, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>7</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46344; File No. SR-NYSE-2001-44]

### Self-Regulatory Organizations; Order Approving a Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 of the Proposed Rule Change by the New York Stock Exchange, Inc. Relating to NYSE Rule 407 ("Transactions—Employees of Members, Member Organizations and the Exchange")

August 13, 2002.

On October 22, 2001, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC"), 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> the proposed rule change to incorporate and amend an existing written interpretation of NYSE Rule 407 to require that associated persons obtain their employers' written approval before entering into private securities transactions, and define the terms "securities or commodities account," "private securities transactions," and "other financial institution." The

proposed rule change was published in the **Federal Register** on December 4, 2001.<sup>3</sup> The Commission received three comments on the proposed rule change.<sup>4</sup> On December 12, 2001, the Exchange submitted Amendment No. 1 to the proposed rule change.<sup>5</sup> On April 16, 2002, the NYSE filed a response to the comment letters.<sup>6</sup> On July 3, 2002, the NYSE submitted Amendment No. 2 to the proposed rule change.<sup>7</sup> This order approves the proposed rule change, as amended, and approves Amendment No. 2 on an accelerated basis.

#### I. Description of the Proposed Rule Change

NYSE Rule 407(b) requires that members, allied members and employees obtain prior written consent from their employers in order to open and maintain a securities or commodities account at another broker-dealer, investment adviser, bank or other financial institution. Employers of such associated persons must receive duplicate confirmations and statements of such accounts.

The Exchange proposes to amend NYSE Rule 407, and incorporate and amend an existing interpretation of NYSE Rule 407 in the *NYSE Interpretation Handbook*, to require that

<sup>3</sup> See Securities Exchange Act Release No. 45097 (November 21, 2001), 66 FR 63084.

<sup>4</sup> See letters to Jonathan G. Katz, Secretary, Commission, from Michael Dardis, Vice President, Compliance Manager, Wells Fargo Investments, dated January 11, 2002 ("Wells Fargo Letter"); and Les Klein, Managing Director, Solomon Smith Barney, dated January 11, 2002 ("SSB Letter"). See also letter from Brian C. Underwood, Senior Vice President, Director of Compliance, A.G. Edwards & Sons, Inc., to Katherine England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated January 24, 2002 ("A.G. Edwards Letter").

<sup>5</sup> See letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Nancy Sanow, Assistant Director, Division, Commission, dated December 11, 2001 ("Amendment No. 1"). Amendment No. 1 modifies the proposed definition of a "securities or commodities account," by adding a non-inclusive phrase to be consistent with the proposed definitions of other terms in the proposed rule text. This was a technical amendment and is not subject to notice and comment.

<sup>6</sup> See letter from Richard P. Bernard, Executive Vice President and General Counsel, NYSE, to Nancy Sanow, Assistant Director, Division, Commission, dated April 15, 2002 ("NYSE Response Letter").

<sup>7</sup> See letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Katherine A. England, Assistant Director, Division, Commission, dated July 5, 2002 ("Amendment No. 2"). Amendment No. 2 clarifies that the proposed rule text shall apply to associated persons of members or member organizations that either establish or maintain a securities or commodities account, or a private securities transaction. In addition, Amendment No. 2 modifies the proposed rule text to require members and member organizations to develop and maintain written procedures for reviewing any securities or commodities accounts, or private securities transactions.

associated persons of members or member organizations obtain their employers' written approval (rather than notification) before entering into private securities transactions. The Exchange also proposes that associated persons effecting private securities transactions shall arrange for duplicate confirmations and statements (or their equivalents) to be sent to another person designated by their member or member organization under NYSE Rule 342(b)(1) ("Offices—Approval, Supervision and Control") to periodically review such transactions.

The Exchange proposes to define the terms "securities or commodities account," "private securities transactions" and "other financial institution." The Exchange also proposes to amend NYSE Rule 407 to provide the Exchange with the general authority to waive any of the requirements of the rule upon written request of a member or member organization that has the obligation to approve the account and where good cause is shown.

#### II. Summary of Comments

The Commission received three comment letters on the proposal.<sup>8</sup> The commenters generally supported the NYSE's proposal to require member firms to conduct a transactional-based review of private securities transactions.<sup>9</sup> However, the commenters recommended certain technical changes to the proposed rule language to reflect the purpose of the proposed rule change.<sup>10</sup> Further, one commenter stated that, although the proposal requires that associated persons effecting private securities transactions arrange for duplicate confirmations and statements (or their equivalents), there may be instances in which confirmations and statements would not be available.<sup>11</sup> Therefore, the commenter believed that in absence of confirmations and statements, a private placement memorandum, offering circular, or subscription agreement may be more appropriate to review.

Regarding the commenters' concerns about clarifying the proposed rule language, the NYSE believed it was not necessary to clarify the text of the proposed rule change.<sup>12</sup> In response to the commenter's suggestions of other

<sup>8</sup> See note 4, *supra*.

<sup>9</sup> See Wells Fargo Letter; SSB Letter; A.G. Edwards Letter.

<sup>10</sup> *Id.*

<sup>11</sup> See A.G. Edwards Letter.

<sup>12</sup> See NYSE Response Letter (stating that the NYSE would clarify the requirements of the rule in an Information Memo upon approval of the proposal by the Commission).

<sup>7</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.