

amount of bonds or notes) of DTC's expenses related to DTC's taking or not taking an action in connection with a Unitary Action.

DTC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to DTC because the proposed rule change will clarify the procedures that DTC will follow in situations calling for Unitary Actions and thereby promote the prompt and accurate clearance and settlement of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition.

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

Written comments from DTC participants have not been solicited or received on the proposed rule change.³

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 such longer period (i) as the Commission may delegate up to ninety days of such date if it finds such longer period to be appropriate and published 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 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, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at DTC's principal office. All submissions should refer to File No. SR-DTC-2002-08 and should be submitted by December 27, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁴

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46933; File No. SR-ISE-2002-22]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the International Securities Exchange, Inc. ("ISE") Relating to Pilot Fee Waivers

December 2, 2002.

On October 3, 2002, the International Securities Exchange, Inc. ("ISE") 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 waive certain fees on a pilot basis. The proposed rule change, as amended, would waive the following fees through May 31, 2003: firm proprietary execution fees for trading in the ISE Block Mechanism; firm proprietary execution fees for all trades on options on the iShares S&P 100 Index Fund; and the \$.10 licensing surcharge fee for all firm proprietary trades in options on the iShares S&P 100 Index Fund. The ISE filed an amendment to the proposed rule change on October 9, 2002.³ The proposed rule

change, as amended, was published for notice and comment in the **Federal Register** on October 28, 2002.⁴ The Commission received no comments on the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange⁵ and, in particular, the requirements of Section 6 of the Act⁶ and the rules and regulations thereunder. The Commission believes that the proposed fee waivers, to be effective until May 31, 2003, are reasonable.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act⁷, that the proposed rule change, as amended (SR-ISE-2002-22), be, and hereby is, approved.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02-30915 Filed 12-5-02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46931; File No. SR-NSCC-2002-05]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating To Clearing Fund Requirements and Letters of Credit Collateralization

November 27, 2002.

I. Introduction

On July 16, 2002, the National Securities Clearing Corporation filed with the Securities and Exchange Commission ("Commission") and on July 25, 2002, and November 25, 2002, amended a proposed rule change File No. SR-NSCC-2002-05 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ Notice of the proposal was published in the

the proposed rule change to clarify that the pilot period for the fee waivers would end on May 31, 2003.

⁴ Securities Exchange Act Release No. 46698 (October 21, 2002), 67 FR 65818.

⁵ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78s(b)(2).

⁸ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

³ Previously, DTC had filed another proposed rule change to establish procedures for Unitary Actions. Securities Exchange Act Release No. 34-45316 (Jan. 18, 2002), 67 FR 4299 (Jan. 29, 2002) (File No. SR-DTC-2001-05). In response to a comment letter from the Corporate Actions Division of the Securities Industry Association (Mar. 25, 2002) and conversations with Board members of that Division, DTC withdrew that proposed rule change and submitted the present filing.

⁴ 17 CFR 200.30-3(a)(12).

⁵ 15 U.S.C. 78s(b)(1).

⁶ 17 CFR 240.19b-4.

⁷ See letter from Michael J. Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division of Market Regulation, SEC, dated October 8, 2002, and attachment ("Amendment No. 1"). In Amendment No. 1, the ISE proposes to correct the rule text of

Federal Register on August 27, 2002.² No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

Under NSCC's current rules, each member, except for a Mutual Fund/Insurance Services Member, is required to maintain a minimum contribution to the clearing fund of \$10,000. The first \$10,000 of a member's contribution must be in cash, and if all or a part of the member's contribution is collateralized with letters of credit, the greater of \$50,000 or ten percent of the member's contribution up to a maximum of \$1,000,000 is required to be in cash.

To assure NSCC of more cash to meet any liquidity needs, NSCC is modifying rule 4 (Clearing Fund) and procedure XV (Clearing Fund Formula and Other Matters) of its rules and procedures to require that, except with respect to a Mutual Fund/Insurance Services Member: (1) The first 40%, but no less than \$10,000, of a member's required deposit to the clearing fund must be in cash and (2) with respect to the remaining amount, no more than 25% of the required deposit may be collateralized with a letter of credit. Mutual Fund/Insurance Services Members' clearing fund requirements will remain unchanged.

Based on NSCC's current calculations, increasing the percentage of cash that must be deposited to the clearing fund will impact approximately 48 member firms. Reducing the permitted use of letters of credit will affect 21 of the approximately 33 member firms that post letters of credit. NSCC will implement these clearing fund changes no earlier than 30 days after the Commission approves the proposed rule change.

III. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed 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.³ By increasing the minimum percentage of cash that NSCC members must deposit to meet their required deposits to the clearing fund and by lowering the maximum percentage of their required clearing fund deposit that may be collateralized with letters of credit, the rule change

will result in NSCC maintaining a higher percentage of cash in its clearing fund which will make the clearing fund more liquid. This will result in NSCC being in a better position to address any situation in which the clearing fund is called into play. As a consequence, NSCC will be better able to provide for the safeguarding of funds and securities under its custody or control or for which it is responsible.

IV. 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 with the requirements of section 17A(b)(3)(F) 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-2002-05) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁴

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02-30888 Filed 12-5-02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46924; File No. SR-NASD-2002-170]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Primex Auction System®

November 27, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and rule 19b-4 thereunder,² notice is hereby given that on November 26, 2002, the National Association of Securities Dealers, Inc., through its subsidiary The Nasdaq Stock Market, Inc. ("Nasdaq"), 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 by Nasdaq. Nasdaq has designated this proposal as effective upon filing pursuant to section 19(b)(3)(A)(iii) of the Act,³ and

subparagraph (f)(2) of rule 19b-5.⁴ 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

Nasdaq is filing a proposed rule change to continue operating Nasdaq's application of the Primex Auction System® ("Primex" or "System") as a Pilot Trading System, pursuant to rule 19b-5 of the Act,⁵ until January 15, 2003, or until the Commission permanently approves Primex, whichever period is shorter. Pursuant to paragraph (f) of rule 19b-5,⁶ Nasdaq is filing this proposed rule change as effective immediately. This filing does not propose any rule language changes.

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

In its filing with the Commission, Nasdaq 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. Nasdaq 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

The Primex Auction System is a facility of Nasdaq that has been operating as a Pilot Trading System ("PTS"), as defined in paragraph (c)(2) of rule 19b-5 of the Act.⁷ As such, Nasdaq was not required to file a proposed rule change under rule 19b-4 of the Act⁸ as long as the Primex maintained its status as a PTS. Under paragraph (c)(2) of rule 19b-5, a system must comply with three criteria to maintain its status as a PTS.⁹ One such

⁴ 17 CFR 240.19b-5(f)(2).

⁵ 17 CFR 240.19b-5.

⁶ 17 CFR 240.19b-4(f).

⁷ 17 CFR 240.19b-5(c)(2).

⁸ 17 CFR 240.19b-4.

⁹ Pursuant to rule 19b-5(c)(2), to qualify as a Pilot Trading System, a system must: (1) Be in operation for less than two years; (2) with respect to each security traded on such Pilot Trading System, during at least two of the last four consecutive calendar months, has traded no more than one percent of the average daily trading volume in the United States; and (3) with respect to all securities traded on such Pilot Trading System, during at least

Continued

² Securities Exchange Act Release No. 46389, (August 21, 2002), 67 FR 55053 (August 27, 2002).

³ 15 U.S.C. 78q-1(b)(3)(F).

⁴ 17 CFR 200.30-3(a)(12).

⁵ 15 U.S.C. 78s(b)(1).

⁶ 17 CFR 240.19b-4.

⁷ 15 U.S.C. 78s(b)(3)(A)(iii).