

more economical for market participants to use ACT for reporting their trading activity.

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

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is 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*

Written comments were neither solicited nor 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)(ii) of the Act<sup>12</sup> and subparagraph (f)(2) of Rule 19b-4 thereunder,<sup>13</sup> because it establishes or changes a due, fee, or other charge imposed by the self-regulatory organization. At any time within 60 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. For purposes of calculating the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on March 27, 2003, when Amendment No. 1 was filed.

**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 at 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 the File No. SR-NASD-2003-51 and should be submitted by May 8, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-47662; File No. SR-NSCC-2003-01]

**Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to New Rule 59, "Information Services for Investment Products"**

April 10, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on January 17, 2003, 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 new Rule 59, "Information Services for Investment Products," to NSCC's rules authorizing NSCC to provide services for the transmission and receipt of data and information related to investment and financial products.

**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*

NSCC currently provides limited information services capabilities through its Mutual Fund and Insurance Product services. There is significant demand in the financial services industry for NSCC to make additional information services containing a broader range of information available to a broader range of participants. The proposed rule would authorize NSCC to design and offer such information services. The services would benefit the financial services industry by providing a means whereby information could be transferred in an automated and standardized environment using NSCC's connectivity.

Information services for investment products under Rule 59 would not involve money settlement at NSCC or the guarantee of any obligation. Access to Rule 59 information services would be available to a broader range of participants than other NSCC services that entail settlement or counterparty default risk.

Participants eligible to use Rule 59 information services would include any entity that has signed a membership agreement with NSCC in any other capacity or an entity meeting any one of the following criteria which has entered into an agreement as set forth below:

(i) It is a broker or dealer registered under the Act;

(ii) It is a bank or trust company, including a trust company having limited power, which is a member of the Federal Reserve System or is supervised and examined by state or federal authorities having supervision over banks;

(iii) It is a clearing agency registered with the Commission pursuant to Section 19(a) of the Act;

(iv) It is subject to supervision or regulation pursuant to the provisions of state insurance law and either issues insurance contracts or is licensed to sell insurance products;

(v) It is an investment company registered under Section 8 of the Investment Company Act of 1940, as amended;

(vi) It is an organization or entity that acts as a third party administrator on

<sup>12</sup> 15 U.S.C. 78s(b)(3)(a)(ii).

<sup>13</sup> 17 CFR 240.19b-4(f)(2).

<sup>14</sup> 17 CFR 200.30-3(a)(12).

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

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

behalf of defined contribution plans as defined in Section 414(i) of the Internal Revenue Code of 1986, as amended;

(vii) It is an Investment Advisor as defined in Section 202(a)(ii) of the Investment Advisors Act of 1940, as amended;

(viii) If it does not qualify under paragraphs (i) through (vii) above, it has demonstrated to the Board of Directors that its business and capabilities are such that it could reasonably expect material benefit from direct access to NSCC's services.

Users of Rule 59 information that are not members or participants of NSCC in any other capacity would be bound by the terms and conditions of a standard NSCC contract applicable to such service, and the rules of NSCC would not apply to them. The contract would state that the user cannot hold itself out as a member of NSCC unless approved for NSCC membership under a different NSCC rule. Such contracts would also include terms regarding limitations of liability, standard of care, and indemnification substantially similar to those contained in NSCC's membership agreement and rules.

NSCC anticipates that the first such information service to be authorized under proposed Rule 59 would be a messaging system used by participants in the separately managed accounts industry.<sup>3</sup> It is expected that the Separately Managed Account Service ("SMAS") would be used for the transmission of information between sponsors of separately managed account programs and the investment managers participating in their programs in order to coordinate information such as account opening data and verification of funding amounts.<sup>4</sup> Currently, this information is generally communicated by a combination of methods such as multiple vendor platforms, faxes, emails, and telephone.

NSCC believes that the proposed rule change would facilitate the transmission of information for investment products in a standardized and automated format, using NSCC's connectivity. Standardization and automation of information on investment products can be expected to reduce processing errors that are typically associated with

manual processes or the use of multiple platforms and methods to transmit information. Accordingly, NSCC believes this filing is consistent with the requirements of the Act and the rules and regulations thereunder because it promotes the prompt and accurate clearance and settlement of securities and other related transactions.

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

NSCC does not believe that the proposed rule change would 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 has, however, worked closely with the MMI regarding standardization of information for the separately managed accounts industry. 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](mailto:rule-comments@sec.gov). All comment letters should refer to File No. SR-NSCC-2003-01. 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. All submissions should refer to the File No. SR-NSCC-2003-01 and should be submitted by May 8, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-47671; File No. SR-NYSE-2002-11]

### **Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change and Amendment No. 1 and Notice of Filing And Order Granting Accelerated Approval to Amendment No. 2 Thereto by the New York Stock Exchange, Inc. to Establish a Six-Month Pilot Program Permitting a Floor Broker to Use an Exchange Authorized and Issued Portable Telephone on the Exchange Floor**

April 11, 2003.

On February 28, 2002, 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> a proposed rule change to implement a six-month pilot program that would amend NYSE Rule 36 (Communication Between Exchange and Members' Offices) to allow a Floor broker's use of an Exchange authorized and provided portable telephone on the Exchange Floor upon approval by the

<sup>5</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.

<sup>3</sup> Information about the separately managed account industry is available on the website of The Money Management Institute ("MMI"): <http://www.moneyinstitute.com>. The MMI is the national organization for the managed account industry, which is comprised principally of portfolio management firms and sponsors of investment programs.

<sup>4</sup> NSCC will file a Section 19(b) proposed rule change with the Commission before implementing any new service, such as the separately managed account service, under Rule 59.