

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48909; File No. SR-NSCC-2003-16]

### Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Data Services Only Members

December 11, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on June 30, 2003, 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 adds a new Rule 31 to NSCC's Rules and amends miscellaneous other provisions of NSCC's Rules as they pertain to data services only members.<sup>2</sup>

#### 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>3</sup>

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

The proposed rule change (i) expands the types of entities that may become data services only members under NSCC's rules to include the same type of entities that are eligible to use NSCC's mutual fund services; (ii) permits data services only members to access NSCC's mutual fund profile service; and (iii) consolidates many of NSCC's rules applicable to data services only members in a new Rule 31 of NSCC's rules.

The proposed rule change adds new types of entities that may become data services only members of NSCC. Data services only members are only eligible to access certain limited data and information services of NSCC specifically enumerated under NSCC's rules. They are not permitted to enter transactions for settlement through NSCC facilities.

Currently, a data services only member must meet the requirements of any clause (i) through (vi) of Section 1 of Rule 2 of NSCC's Rules; that is, they must be either a registered broker-dealer, bank or trust company, registered clearing agency, insurance company or entity licensed to sell insurance products, an investment company that has registered under the Investment Company Act of 1940, as amended, or an entity that has demonstrated to NSCC's Board of Directors that its business and capabilities are such that it could reasonably expect material benefit from access to such services in order to be accepted as a data services only member.

These types of entities are identical to the types permitted to be NSCC members under Rule 2, subject in the case of Rule 2 membership to additional criteria relating to standards of financial responsibility and operational capability as set forth in NSCC's procedures. Since data services only members do not input transactions for settlement through NSCC's facilities and since NSCC is therefore not subject to settlement exposure by these members, data services only members are not subject to additional NSCC membership standards regarding financial responsibility.

The proposed rule change adds to the types of entities that may become data services only members the types that are

currently eligible to use mutual fund services under rule 52;<sup>4</sup> that is, they may also be either (i) an investment advisor as defined in section 202(a)(ii) of the Investment Advisors Act of 1940, as amended; (ii) a principal underwriter as defined in section 2(a)(29) of the Investment Company Act of 1940, as amended, or a co-distributor, sub-distributor, or otherwise authorized to process mutual fund transactions; or (iii) an organization or entity that acts as a third-party administrator on behalf of defined contribution plans as defined in section 414(i) of the Internal Revenue Code of 1986, as amended.

The proposed rule change also adds NSCC's mutual fund profile service to the types of services available to data services only members. Mutual fund profile service ("MFPS") contains information on mutual funds and investment funds as input by the fund, including data on commission discounts ("breakpoints") available to certain investors buying shares of certain funds under the criteria established by the fund.

Allowing data services only members to access mutual fund profile service and expanding the entities eligible to become data services only members will assist in making mutual fund information, including breakpoint information, more widely available.

The proposed rule change also makes technical changes to NSCC's Rules by adding a new Rule 31 applicable to data services only members, consolidating for ease of reference many NSCC rule provisions applicable to data services only members. Consolidation of many of the provisions applicable to data services only members in Rule 31 will benefit NSCC participants by clarifying the responsibilities and entitlements directly applicable to data services only members and by making it easier for entities not familiar with clearing agency rules to join NSCC.

The technical changes proposed for consolidation of certain rule provisions applicable to data services only members will facilitate access to NSCC services by qualified entities. The proposed changes which add additional entity types to the ones which may currently qualify to become a data services only member and permit data services only members to access NSCC's mutual fund profile service will enable a wider group of mutual fund industry participants to have automated access to MFPS data about mutual funds. These

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

<sup>2</sup> The category of data services only member and modifications applicable to such category were approved by the Commission in Securities Exchange Act Release Nos. 44960 (October 19, 2001), 66 FR 56383 [File No. SR-NSCC-2001-14] (added data services only members as a new category to NSCC rules and permitted them to use limited services); 45560 (March 14, 2002), 67 FR 13200 [File No. SR-NSCC-2001-18] (permitted data services only members to access Fund/SERV for non-settling transactions); 47197 (January 15, 2003), 68 FR 3917 [File No. SR-NSCC-2002-13] (permitted data services only members to access NSCC's insurance processing services for non-settling transactions); and 47664 (April 7, 2003), 68 FR 17850 [File No. SR-NSCC-2003-04] (permitted data services only members and insurance carrier members to populate NSCC's new product repository databases with information relating to insurance products).

<sup>3</sup> The Commission has modified parts of these statements.

<sup>4</sup> Entities eligible to use mutual fund services include fund members admitted under Rule 51 and TPA members admitted under Rule 60 of NSCC's Rules.

proposed changes to NSCC's rules facilitate the prompt and accurate clearance and settlement of securities transactions and are therefore consistent with the requirements of the Act and the rules and regulations thereunder.

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

NSCC does not believe the proposed rule change will impose a burden on competition.

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

NSCC has not solicited nor received written comments on the proposed rule change. NSCC has worked closely with the industry to enhance the availability of mutual fund services to a wider range of mutual fund industry participants. NSCC will notify the Commission of any written comments it receives.

**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)(iii) of the Act<sup>5</sup> and Rule 19b-4(f)(4)<sup>6</sup> promulgated thereunder because the proposal effects a change in an existing service of NSCC that (i) does not adversely affect the safeguarding of securities or funds in the custody or control of NSCC or for which it is responsible and (ii) does not significantly affect the respective rights or obligations of NSCC or persons using the service. At any time within sixty days of the filing of the proposed rule change, the Commission could have summarily abrogated such rule change if it appeared to the Commission that such action was 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. 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-2003-16. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your 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 and on NSCC's Web site at <http://www.nsc.com/legal/>. All submissions should refer to the File No. SR-NSCC-2003-16 and should be submitted by January 14, 2004.

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

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

[FR Doc. 03-31648 Filed 12-23-03; 8:45 am]

**BILLING CODE 8010-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-48946; File No. SR-NYSE-2003-34]

**Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to the Amendment and Restatement of the Constitution of the Exchange To Reform the Governance and Management Architecture of the Exchange**

December 17, 2003.

**I. Introduction**

On November 7, 2003, 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 amend and restate the Exchange's Constitution to reform the

governance and management architecture of the Exchange. The proposed rule change was published for public comment in the **Federal Register** on November 13, 2003.<sup>3</sup> In addition to the proposed amendments to the NYSE Constitution, which are the subject of this Order, the Notice of the proposed rule change included as exhibits the texts of the Proxy Statement sent to NYSE members detailing the proposed changes to the Constitution and a letter, dated November 4, 2003, from the Exchange's Interim Chairman and CEO to NYSE members supplementing the Proxy Statement (the "Supplemental Letter").<sup>4</sup> On November 19, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.<sup>5</sup> The Commission received 18 comment letters regarding the proposed rule change.<sup>6</sup> This Order approves the Exchange's rule change as proposed.

**II. Description of the Proposed Rule Change**

The NYSE proposes to amend and restate its Constitution to significantly change and enhance its governance

<sup>3</sup> Securities Exchange Act Release No. 48764 (November 7, 2003), 68 FR 64380 ("Notice").

<sup>4</sup> In the Supplemental Letter, the NYSE's Interim Chairman and CEO indicated, among other things, his intention to bring before the NYSE Board several further amendments to the Constitution to further clarify and underscore the separation and independence of the regulatory function from the Exchange's marketplace function and from inappropriate influence by members and member organizations. The Commission notes that on November 24, 2003, the reconstituted Board voted to approve these amendments, as well as several others, to the NYSE Constitution. See Special Membership Bulletin regarding Additional Amendments to the Constitution, dated November 26, 2003. See also Letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Annette L. Nazareth, Director, Division of Market Regulation ("Division"), Commission, dated December 4, 2003 ("Additional Amendments Letter"). The NYSE intends to file a proposed rule change with the Commission pursuant to section 19(b)(1) of the Act to incorporate these additional Constitutional changes. See *infra* notes 14, 22, 23, 35, 36, 39, 40, and 88.

<sup>5</sup> See Letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division, Commission, dated November 19, 2003. In Amendment No.1, the Exchange advised that the proposed rule change was approved by unanimous written consent of the Exchange's Board of Directors effective November 13, 2003, and by vote of the members of the Exchange on November 18, 2003. The Exchange noted that, as a result, its internal procedures with respect to the proposed rule change were complete. Amendment No. 1 is simply a technical amendment and thus it is not necessary for the Commission to seek public comment on it.

<sup>6</sup> A list of commenters on the rule proposal, whose comments were received as of December 12, 2003, is attached as Exhibit A to this Order. The public file for the NYSE's proposal, which includes all comment letters received on the proposal, is located at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549-0102.

<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).

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

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