

including suitability recommendations, and highlights the special risks and characteristics associated with the Notes. Specifically, among other things, the circular will indicate that the Notes do not guarantee a total return of principal at maturity, that the Participation Rate on the Notes is expected to be between 100% and 115% per unit,²⁰ that the Notes will not pay interest, and that the Notes will provide exposure in the DJIA. The circular will also explain Merrill Lynch's calculation of the Notes' Participation Rate. Distribution of the circular should help to ensure that only customers with an understanding of the risks attendant to the trading of the Notes and who are able to bear the financial risks associated with transactions in the Notes will trade the Notes. In addition, the Commission notes that Merrill Lynch will deliver a prospectus in connection with the initial purchase of the Notes.

Second, the Commission notes that the final rate of return on the Notes depends, in part, upon the individual credit of the issuer, Merrill Lynch. To some extent this credit risk is minimized by the NASD's listing standards in NASD Rule 4420(f), which provide that only issuers satisfying substantial asset and equity requirements may issue these types of hybrid securities. In addition, the NASD's hybrid listing standards further require that the Notes have at least \$4 million in market value. Financial information regarding Merrill Lynch, in addition to information concerning the issuers of the securities comprising the Index, will be publicly available.²¹

Third, the Notes will be registered under Section 12 of the Act. As noted above, the NASD's and Nasdaq's existing equity trading rules will apply to the Notes, which will be subject to equity margin rules and will trade during the regular equity trading hours of 9:30 a.m. to 4 p.m. NASD Regulation's surveillance procedures for the Notes will be the same as its current surveillance procedures for equity securities, and will include additional monitoring on key pricing dates. Nasdaq represents that its surveillance procedures are adequate to monitor properly the grading of the Notes.

Fourth, the Commission has a systemic concern that a broker-dealer, such as Merrill Lynch, or a subsidiary providing a hedge for the issuer will

incur position exposure. However, as the Commission has concluded in previous approval orders for the hybrid instruments issued by broker-dealers,²² the Commission believes that this concern is minimal given the size of the Notes issuance in relation to the net worth of Merrill Lynch.

Nasdaq also represents that index value of the DJIA is publicly disseminate every two seconds if the index valuation changes. The Commission finds that such public dissemination of the index valuation will provide investors with timely and useful information concerning the value of their Notes.

Finally, the Commission believes that the listing and trading of the proposed Notes should not unduly impact the market for the securities underlying the DJIA or raise manipulative concerns. In approving the product, the Commission recognizes that the DJIA is a price-weighted index of 30 companies listed on Nasdaq and the NYSE. The Commission notes that the DJIA is determined, composed, and calculated by the editors of the WSJ, and not a broker-dealer. As of February 12, 2004, the market capitalization of the securities included in the DJIA ranged from a high of \$329.3 billion to a low of \$8.4 billion. The average monthly trading volume for the last six months, as of the same date, ranged from a high of 24.6 million shares to a low of 3.0 million shares. Given the compositions of the stocks underlying the DJIA, the Commission believes that the listing and trading of the Notes that are linked to the DJIA, should not unduly impact the market for the underlying securities comprising the DJIA or raise manipulative concerns. As discussed more fully above, the underlying stocks comprising the DJIA are well-capitalized, highly liquid stocks. Moreover, the issuers of the underlying securities comprising the DJIA, are subject to reporting requirements under the Act, and all of the component stocks are either listed or traded on, or traded through the facilities of, U.S. securities markets. In addition, Nasdaq's surveillance procedures should serve to

²² See, e.g., Securities Exchange Act Release Nos. 44913 (October 9, 2001), 66 FR 52469 (October 15, 2001) (approving the listing and trading of notes issued by Morgan Stanley Dean Witter & Co. whose return is based on the performance of the Nasdaq-100 Index); 44483 (June 27, 2001), 66 FR 35677 (July 6, 2001) (approving the listing and trading of notes issued by Merrill Lynch whose return is based on a portfolio of 20 securities selected from the Amex Institutional Index); and 37744 (September 27, 1996), 61 FR 52480 (October 7, 1996) (approving the listing and trading of notes issued by Merrill Lynch whose return is based on a weighted portfolio of the Healthcare/Biotechnology industry securities).

deter as well as detect any potential manipulation.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that the Notes will provide investors with an additional investment choice and that accelerated approval of the proposal will allow investors to begin trading the Notes promptly. In addition, the Commission notes that it has previously approved the listing and trading of similar Notes and other hybrid securities based on the Index.²³ Accordingly, the Commission believes that there is good cause, consistent with Sections 15A(b)(6) and 19(b)(2) of the Act,²⁴ to approve the proposal, on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,²⁵ that the proposed rule change (SR-NASD-2004-030) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁶

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 04-4428 Filed 2-27-04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49294; File No. SR-NSCC-2003-15]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving Proposed Rule Change To Implement Real-Time Trade Matching for Fixed Income Securities

February 23, 2004.

I. Introduction

On June 27, 2003, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-NSCC-2003-15 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ Notice of the proposal was published in the **Federal Register** on January 16, 2004.² No comment letters

²³ See *supra* note 15.

²⁴ 15 U.S.C. 78o-3(b)(6) and 78s(b)(2).

²⁵ 15 U.S.C. 78s(b)(2).

²⁶ 17 CFR.200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 49051 (January 12, 2004), 69 FR 2639.

²⁰ The actual Participation Rate date will be determined on the day the Notes are priced for initial sale to the public and disclosed in the final prospectus supplement.

²¹ The companies comprising the DJIA are reporting companies under the Act.

were received. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description

NSCC is seeking to implement a real-time trade matching system ("RTTM") for certain NSCC-eligible corporate bonds, municipal bonds, and unit investment trusts ("NSCC debt securities").³ RTTM was implemented in the fourth quarter of 2000 by the former Government Securities Clearing Corporation ("GSCC"),⁴ an NSCC affiliate, for the processing of government securities transactions.⁵ It was designed so that the platform could be used for other fixed income securities. Accordingly, it was implemented in 2002 for mortgage-backed securities transactions processed by the former Mortgage Backed Securities Clearing Corporation ("MBSCC").⁶ The purpose of the proposed rule change is to implement RTTM for NSCC debt securities. RTTM will eventually replace NSCC's current Fixed Income Transactions System ("FITS").⁷

The two areas of NSCC debt securities processing rules that require changes to implement RTTM are those governing (1) inbound submissions to NSCC and (2) NSCC's reporting of information related to such submissions to participants. Specifically, interactive messages and the RTTM Web User Interface ("RTTM Web")⁸ will be added

as ways in which participants can submit trade data and subsequent related trade processing instructions.⁹ With respect to output issued by NSCC, initially upon implementation end-of-day reports will continue to be produced by FITS whereas intraday reports will be produced by RTTM. In addition, NSCC will make output available for interactive message users and RTTM Web users in those respective media.

The following is a summary of the key proposed rule changes needed to implement RTTM:

(1) References to "Contract Lists" will be replaced with references to "output" or to "information made available" by NSCC to cover the additional types of output that could be generated by RTTM.

(2) References to the names of specific instructions that participants may submit to resolve uncompleted trades (e.g., "Delete of Original Trade Input") will be replaced with general references to "appropriate instructions" to include similar instructions which have different names that may be submitted by interactive message users and RTTM Web users.¹⁰

(3) With respect to trades submitted for two-sided comparison processing, interactive message users, and RTTM Web users will be able to modify their trades, subject to the timeframes and requirements imposed by NSCC from time-to-time and will also be able to remove an unmatched trade from processing by sending an instruction indicating that they do not agree with the terms of a trade that has been submitted against them.¹¹ Locked-in trade sources and syndicate managers that are interactive message users or RTTM Web users will also be able to modify their trade submissions.

(4) RTTM will accept cash and next-day transactions for comparison-only processing. RTTM will add an intraday money tolerance pursuant to which NSCC will compare a trade using the seller's contract amount if the contract amounts submitted by the buyer and

seller are within a net \$2 difference for trades of \$1 million or less or \$2 per million for trades greater than \$1 million.¹² In addition, RTTM will compare a trade if trade data matches in all respects, including contract amounts which have been compared pursuant to the money tolerances, except for trade date. In this case, the earlier of the two trade dates submitted will be used. RTTM will not use the summarization process used to compare trades currently set forth in NSCC Procedure II, Section D.1(e).

(5) NSCC's rules and procedures will continue to provide that the submission of a locked-in trade or a syndicate takedown trade results in a compared trade. However, RTTM will provide members on behalf of whom locked-in and syndicate takedown trades are submitted ("LI/ST contrasides") the option of submitting matching trade details for their internal reconciliation purposes. In order to facilitate the participants' internal reconciliation process, RTTM has been designed to issue output that indicates a status of "unmatched" or "match request" upon receipt of a locked-in or syndicate takedown trade. Notwithstanding the output indicating unmatched and match request, the proposed rule changes make clear that the submission of matching trade data by LI/ST contrasides will have no legal effect on the status of locked-in and syndicate takedown trades as compared trades. In addition, notwithstanding that output is made available by NSCC as a result of subsequent processing information submitted by LI/ST contrasides that are not specifically provided for in NSCC's rules and procedures, the proposed rule changes make clear that such submissions will have no legal effect and that RTTM has been designed to accept such submissions for participants' internal reconciliation purposes only.

In addition to the above, NSCC is proposing the following additional technical changes and corrections:

(1) References to the "Automated Bond System" ("ABS") will be deleted because ABS trades submitted by the New York Stock Exchange are locked-in trades and are covered by provisions dealing with locked-in trades. In addition, references to the "AMEX Order File System" will be deleted because that system is no longer operational.

(2) Technical corrections will be made throughout the debt when-issued

³ The proposed rule change does not apply to debt securities transactions that are submitted to NSCC via its correspondent clearing service, by regional exchanges/marketplaces, or through qualified securities depositories as defined in NSCC's rules because such transactions will not be processed by RTTM.

⁴ On January 1, 2003, MBS Clearing Corporation ("MBSCC") was merged into GSCC and GSCC was renamed the Fixed Income Clearing Corporation ("FICC"). The functions previously performed by GSCC are now performed by the Government Securities Division of FICC, and the functions previously performed by MBSCC are now performed by the Mortgage-Backed Securities Division of FICC. Securities Exchange Act Release No. 47015 (December 17, 2002), 67 FR 78531 [File Nos. SR-GSCC-2002-09 and SR-MBSCC-2002-01].

⁵ Securities Exchange Act Release No. 44946 (October 17, 2001), 66 FR 53816 [File No. SR-GSCC-2001-01].

⁶ Securities Exchange Act Release No. 45563 (March 14, 2002), 67 FR 13389 [File No. SR-MBSCC-2001-02].

⁷ In March 2003, the Commission approved certain modifications to FITS in order that NSCC could prepare its participants for the new RTTM functionality. Securities Exchange Act Release No. 47494 (March 13, 2003), 68 FR 13975 [File No. SR-NSCC-2003-10].

⁸ The RTTM Web will replace NSCC's PC Web application for NSCC fixed income securities.

RTTM will be implemented in phases in 2004. Participants will be notified of specific implementation dates by Important Notice. Conversation with Nikki Poulos, Vice President and Associate General Counsel, FICC (January 9, 2004).

⁹ Initially, RTTM will support the current batch method of data input.

¹⁰ For example, in the current version of NSCC's procedures there is a reference to an instruction called a "Delete of Original Trade Input" that is used by batch participants to delete uncompleted trade data they have submitted. Interactive message users and RTTM Web users will use an instruction called a "Cancel" to accomplish the same result. Therefore, references to "Delete of Original Trade Input" will be replaced by references to "appropriate instruction" in order to cover the equivalent interactive message and RTTM Web instruction.

¹¹ RTTM Web users will also be able to subsequently restore a trade to processing by submitting the requisite instruction.

¹² No changes are being proposed to NSCC's existing end-of-day money tolerance currently contained in Procedure II, Section D.1(a).

section of NSCC's Procedure II, Section E to clarify the submission requirements for a transaction to be treated as a when-issued transaction. It should be noted that due to the systems development schedule, RTTM will not be available with respect to when-issued corporate debt securities transactions upon implementation. NSCC will file a rule change pursuant to Section 19(b)(3) of the Act and will notify members when the service becomes available for these transactions.

(3) Technical corrections will be made to the use of the term "settlement date" so that when referenced with upper case letters it means the settlement date as established by NSCC.¹³

III. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions.¹⁴ The Commission finds that NSCC's proposed rule change is consistent with this requirement because it should permit the accurate clearance and settlement of securities by enabling NSCC to process fixed income trades more efficiently.

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 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-2003-15) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04-4432 Filed 2-27-04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49293; File No. SR-PCX-2004-02]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to the Elimination of the Posting Period for an Application for Reinstatement

February 23, 2004.

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 January 28, 2004, the Pacific Exchange, Inc. ("PCX" or "Exchange"), through its wholly owned subsidiary PCX Equities, Inc. ("PCXE"), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in items I, II, and III below, which items have been prepared by the Exchange. On February 18, 2004, the PCX amended the proposed rule change.³ The PCX filed the proposal pursuant to section 19(b)(3)(A) of the Act,⁴ and Rule 19b-4(f)(6) thereunder,⁵ which renders the proposal effective upon filing with the Commission.⁶ 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 PCX proposes to amend its rules governing the Archipelago Exchange ("ArcxEx"), the equities trading facility of PCXE, by amending PCXE Rule 11.7 to eliminate the 10-day period upon which the Exchange must give notification to all Equity Trading Permit ("ETP") Holders of an application for reinstatement. The text of the proposed rule change is available at the Office of

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Steven B. Matlin, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated February 9, 2004 ("Amendment No. 1"). In Amendment No. 1, the PCX provided additional justification for its proposal under section 6(b)(3) of the Act and corrected the title of the proposed rule change. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on February 18, 2004, the date the Exchange filed Amendment No. 1.

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ 17 CFR 240.19b-4(f)(6).

⁶ The PCX provided the Commission with notice of its intent to file the proposed rule change on January 21, 2004. See Rule 19b-4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).

the Secretary, PCX and at the Commission.

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

In its filing with the Commission, the PCX 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. The PCX 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

As part of its ongoing efforts to enhance participation on ArcaEx, the PCX recently amended its rules to expedite the timeframe within which new ETP Holders may effect transactions on the Exchange. On September 24, 2003, the Exchange eliminated its requirement that the names of all new ETP applicants must be published for 10 days in the Exchange's Weekly Bulletin.⁷ The Exchange notes that although it eliminated the 10-day posting period for new applicants, it maintains the 10-day posting period for applicants seeking reinstatement to the Exchange pursuant to PCXE Rule 11.7. In order to make the rules consistent, the Exchange is proposing to amend PCXE Rule 11.7 to eliminate the 10-day period during which the Exchange must give notification to all ETP Holders of an application for reinstatement.

The Exchange's current rules governing reinstatement procedures for ETP Holders and associated persons of ETP Holders are set forth in PCXE Rule 11.7. Presently, PCXE Rule 11.7 provides that upon sufficient proof of a resolution of the problem or problems responsible for such suspension, the Exchange shall notify in writing all ETP Holders of the application for reinstatement and that a meeting of the PCXE Board will be held not less than 10 business days subsequent to such notice. Historically, membership-based exchanges in which members have ownership and involvement in determining who should be granted access to their facilities used posting

⁷ See Securities Exchange Act Release No. 34-48532 (September 24, 2003), 68 FR 56369 (September 30, 2003) (SR-PCX-2003-43).

¹³ For example, if a trade is executed on September 15 with a contract settlement date of September 18 but the trade does not match until September 18 or later, NSCC will provide the Settlement Date.

¹⁴ 15 U.S.C. 78q-1(b)(3)(F).

¹⁵ 17 CFR 200.30-3(a)(12).