

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

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

### III. 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. Comments may be submitted by any of the following methods:

#### *Electronic comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2004-25 on the subject line.

#### *Paper comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR-ISE-2004-25. 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, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). 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 also will be available for inspection and copying at the principal offices of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions

should refer to File Number SR-ISE-2004-25 and should be submitted on or before August 11, 2004.

### IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, 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 exchange,<sup>6</sup> and, in particular, with the requirements of Section 6(b) of the Act<sup>7</sup> and the rules and regulations thereunder. The Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>8</sup> which requires that the rules of the Exchange provide for the equitable allocation or reasonable dues, fees and other charges among its members and other persons using its facilities. The Commission believes that the extension of the Linkage fee pilot until July 31, 2005 will give the Exchange and the Commission further opportunity to evaluate whether such fees are appropriate.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of the filing thereof in the **Federal Register**. The Commission believes that granting accelerated approval will preserve the Exchange's existing pilot program for Linkage fees without interruption as the ISE and the Commission further consider the appropriateness of Linkage fees.

### V. Conclusion

*It is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act<sup>10</sup> that the proposed rule change (SR-ISE-2004-25) is hereby approved on an accelerated basis for a pilot period to expire on July 31, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04-16556 Filed 7-20-04; 8:45 am]

**BILLING CODE 8010-01-P**

<sup>6</sup> In approving this rule, the Commission notes that it has considered its impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(4).

<sup>9</sup> 15 U.S.C. 78s(b)(2).

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

<sup>11</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50026; File No. SR-NSCC-2004-01]

### Self-Regulatory Organizations; National Securities Clearing Corporation; Order Granting Approval of a Proposed Rule Change To Modify the National Securities Clearing Corporation's Continuous Net Settlement System

July 15, 2004.

#### I. Introduction

On February 23, 2004, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") and on March 26, 2004, amended proposed rule change File No. SR-NSCC-2004-01 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> Notice of the proposed rule change was published in the **Federal Register** on May 24, 2004.<sup>2</sup> No comment letters were received. For the reasons discussed below, the Commission is now granting approval of the proposed rule change.

#### II. Description

As part of the securities industry's straight-through processing ("STP") initiative, NSCC has been engaged in a project to update and revise its Continuous Net Settlement ("CNS") system ("CNS Rewrite"). The major aspects of the CNS Rewrite include a completely new platform on which the CNS system will run that will accommodate real-time updates to the system, will improve access to CNS and depository information for members, and will provide the capability to add trades to the settlement process on a real-time basis until 11:30 a.m. on settlement day.

The new CNS system, with a targeted implementation date of August 2004, will be able to take in trades until 11:30 a.m. on settlement day and to net and settle them that day.<sup>3</sup> To support this, NSCC has developed new Supplemental Consolidated Trade Summaries that will report trades settling on settlement date.

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

<sup>2</sup> Securities Exchange Act Release No. 49717 (May 17, 2004), 69 FR 29605.

<sup>3</sup> At the current time, trades in debt securities compared or recorded through NSCC's Real-Time Trade Matching ("RTTM") system will not utilize this same day settling capability. Instead, as-of trades in such securities compared or recorded through RTTM after its cutoff time on T+2 will not settle in the normal settlement cycle but will be assigned a new settlement date which will be the settlement day following the day the trade is compared or recorded by NSCC.

CNS will produce the Supplemental Consolidated Trade Summary at or about 2 a.m. and at or about 1 p.m. on each settlement date. In addition, so that members can update their CNS positions immediately, CNS will provide intraday messages for activity that occurs after the start of the day cycle as a result of settling trades and miscellaneous activity going into CNS on settlement date.<sup>4</sup> These messages will be optional to the member because the same information will also be reported in the second Supplemental Consolidated Trade Summary made available at 1 p.m. and in the Daytime Miscellaneous Activity Report issued later in the afternoon on each settlement date.<sup>5</sup> In addition, members will be able to view their CNS positions on a real-time basis using the Participant Browser Service ("PBS") developed by The Depository Trust Company ("DTC"). The CNS Cash Reconciliation Statement will be updated on a real-time basis and will be available on PBS after night cycle processing.

Another new STP feature available in the new CNS system will be the ability to create automated Deliver Orders ("DOs") for non-CNS, depository eligible securities.<sup>6</sup> Today, NSCC creates receive and deliver instructions, or balance orders, for non-CNS depository eligible securities. Its members then have to enter the balance orders as DOs at DTC. To automate and streamline the processing of trades in non-CNS, depository eligible issues, at the request of the member with the delivery obligation, NSCC will create delivery versus payment DOs that will automatically be transmitted to DTC for processing.<sup>7</sup> This is an optional feature that can be activated by the delivery of standing instructions to NSCC that will cover all of the deliverer's balance orders and special trades.<sup>8</sup>

<sup>4</sup> In general, the day cycle currently begins at approximately 7 a.m. and ends at 3:10 p.m., and the night cycle begins at approximately 7 p.m. and ends at 12 a.m.

<sup>5</sup> The Daytime Miscellaneous Activity Report will also include corporate actions, stock borrows, and any other miscellaneous activity received in CNS after the start of the day cycle.

<sup>6</sup> Transactions in securities that are not eligible for CNS are processed through NSCC's Balance Order Accounting Operation. Such securities are referred to as "Balance Order Securities."

<sup>7</sup> The Commission recently approved DTC's establishing an interface to accommodate this transmission. Securities Exchange Act Release No. 50025 (July 15, 2004) [File No. SR-DTC-2004-04].

<sup>8</sup> All such DOs will be subject to DTC's applicable DO fees. The DO standing instructions will cover all of the member's NSCC balance orders and special trades. The delivering member can use DTC's Inventory Management System if it wishes to control the timing and flow of any particular balance order transaction.

Other new features that will be implemented include the enhancement of the CNS Stock Borrow Program to include acceptance of borrowing instructions for the day cycle and the acceptance and real-time application of CNS "Fully Paid For" securities instructions. The CNS Stock Borrow Program enhancement is intended to maximize the use of excess collateral and reduce the number of CNS fails. In addition to providing instructions for securities available for borrowing in the night cycle, members will now also be able to provide CNS with a new file of available excess collateral from 5 a.m. until 1 p.m. for use in the day cycle.

The real-time acceptance of CNS "Fully Paid For" instructions is intended to further facilitate members' compliance with securities law requirements concerning possession or control of customer securities. At the current time, a member that delivers securities in its possession or control in anticipation of receiving securities from CNS as a result of allocations during the night cycle may instruct NSCC to move the open CNS long position from its CNS A (long valued) Account to its Fully-Paid-For E Subaccount to meet its customer possession or control requirements. NSCC makes such movements at the end of the processing day and concurrently debits the member's settlement account for the value of the position in the E subaccount. NSCC then segregates the funds received as a result of such debit so that it constitutes a control location within the meaning of Securities Exchange Act Rule 15c3-3.<sup>9</sup>

The proposed CNS changes modify this procedure to (a) expand the capability of a member to utilize the Fully-Paid-For E Subaccount in anticipation of CNS allocations in the day cycle as well as in the night cycle and (b) permit fully-paid instructions to be received and applied on a real-time basis during the day cycle up through 2:45 p.m. By accepting such instructions on a real-time basis, any securities received into a member's Fully-Paid-For E subaccount can automatically be updated to the member's memo seg position at DTC on an intraday basis at the member's election through standing instructions.<sup>10</sup>

The following is a summary of NSCC rules that have to be changed to implement the modifications to the CNS system:

<sup>9</sup> 17 CFR 240.15c3-3.

<sup>10</sup> For a description of DTC's memo seg service, refer to Securities Exchange Act Release No. 26250 (November 3, 1988), 53 FR 45638 [File No. SR-DTC-88-16].

(1) Rule 11, "CNS System," is being amended to reflect the addition of the Supplemental Consolidated Trade Summaries that will be produced on each settlement day. Because of the new system's ability to take in trades, to net them, and to update CNS processing on a real-time basis on settlement day, Rule 11 is also being amended to make clear that with respect to trades settling on that day, a member's obligation to deliver or pay for and receive CNS securities will be fixed each time the member's net settling position is determined by CNS processing and the net settling position is made available by NSCC.

In addition, Section 9 of Rule 11 is being amended to provide the mechanism whereby a member with trades in CNS or Balance Order securities designated as "Special Trades" (which must be settled on a member-to-member basis) may issue NSCC standing instructions to provide automated DO instructions to DTC.<sup>11</sup> Any such instructions will cover all of the delivering member's balance orders and Special Trades.

(2) Rule 44, "Deliveries Pursuant to Balance Orders," is being amended to provide the mechanism whereby a delivering member can issue standing instructions to NSCC to provide automated delivery instructions to DTC. Any such instructions will cover all of the delivering member's balance orders and Special Trades.<sup>12</sup>

(3) Procedures II, "Trade Comparison Service," and III, "Trade Recording Service (Interface Clearing Procedures)," are being amended to make conforming changes to account for same day settling trades by indicating that the cutoff times for trade comparison and recording of as-of trades to settle on their originally designated settlement schedules will now be the cutoff time set on T+3 (instead of T+2). T+3 and older as-of trades received thereafter will be assigned a new settlement date, which will be the following settlement day.<sup>13</sup>

<sup>11</sup> A technical change is also being made to this section to delete the reference to such trades having the status of "security balance orders." This deletion should have been made at the same time Rule 18 was amended in 2000 to clarify that Special Trades are to be settled directly between the members. Securities Exchange Act Release No. 42747 (May 2, 2000), 65 FR 30170 [File No. SR-NSCC-98-14].

<sup>12</sup> Once this functionality is implemented, NSCC will no longer provide the PDQ Automated Municipal Bond Settlement Facility. This service currently provides for automated DTC delivery instructions for compared municipal bond transactions.

<sup>13</sup> At this time, no corresponding change is being made to Procedure II.D. because both the Fixed Income Transaction System ("FITS") and its

(4) Procedure V, "Balance Order Accounting Operation," is being amended to reflect that security balance orders will be shown on the Consolidated Trade Summary and Supplemental Consolidated Trade Summaries issued on each settlement day. An indicator will be added to these reports to reflect any standing instructions given by the member for the issuance of DOs for balance orders and Special Trades.

(5) Procedure VII, "CNS Accounting Operation," is being amended to reflect (a) NSCC's ability to accept through 11:30 a.m. and process on a real-time basis on settlement date trades settling on that day, (b) the issuance of the two Supplemental Consolidated Trade Summaries on each settlement day, (c) the updated reports and methods of reporting information (including through real-time message updates, the web-based PBS screens which report updated CNS positions on a real-time basis, and additional Miscellaneous Activity Reports), and (d) certain conforming changes to properly reflect current processing.

In addition, the Fully-Paid-For Account procedures included in Procedure VII, "CNS Accounting Operation," are being amended to reflect the extension of this program to the day cycle allocation process, the real-time acceptance of instructions through the day cycle, and the real-time application of such instructions. Also the Note accompanying Procedure VII.E.5. is being modified because the portion relating to stock loan recalls is no longer applicable.<sup>14</sup>

(6) Addendum C, "NSCC Automated Stock Borrow Procedures," is being amended to reflect the extension of this service to the daytime processing cycle and to provide the mechanism whereby members can loan their available securities to NSCC during the morning of settlement day. These securities will be used for any shortfalls that the CNS system has in the day cycle.

successor, RTTM, do not have same day settling trade capability. They will continue to maintain their current T+2 cutoff times so that trades received for comparison or recording by FITS or RTTM after T+2 will be assigned a new settlement date, which will be the settlement day following the date the trade is compared or recorded. A subsequent rule filing will be made to make any necessary conforming changes at such time as the RTTM system is modified to accept and process same day settling trades.

<sup>14</sup> The portion of the Note relating to stock loan recalls was made inapplicable pursuant to a no-action letter to Robert J. Woldow, Senior Vice President and General Counsel, NSCC, from Michael Macchiaroli, Assistant Director, Division of Market Regulation, Securities and Exchange Commission (June 28, 1985).

The daytime stock borrow process will be separate from the nighttime stock borrow process. Securities that members make available for the nighttime process will not be applied in the daytime process. Members will have the option to participate in the nighttime stock borrow program, the daytime stock borrow program, or in both programs. The changes also reflect the member's ability to be advised of any borrows through intraday messages so that members have the ability to make movements into their Fully-Paid-For Accounts as needed.

(7) Addendum G, "Fully-Paid-For Account," is being amended to reflect that this application will be available to members on a real-time basis during the day cycle on each settlement day in order to facilitate members' compliance with their securities possession or control requirements.

At this time a clarification is also being made to Rule 12, "Settlement," consistent with NSCC's collection and segregation of amounts debited in connection with positions in the Fully-Paid-For E subaccount. It has always been understood that the movement into this subaccount was contingent upon the member's due payment of the funds debited with respect to the value of that position. It is the collection and segregation of such funds that permits NSCC to guarantee the position "free of payment" and thus constitute a valid "control location." Thus, Rule 12 is being amended to make clear that any movement of a long valued position to the Fully-Paid-For E subaccount will not become final until the member satisfies its end-of-day money settlement obligation.

(8) Addendum K, "Interpretation of the Board of Directors—Application of Clearing Fund," is being amended to reflect that with respect to trades received by NSCC after commencement of the nighttime processing cycle and prior to 11:30 a.m. on each settlement day, NSCC's trade guaranty will attach to such trades as of the completion of the trade comparison process or the trade recording process for such trades.

(9) Consistent with NSCC's extension of its trade guaranty to same day settling trades, Rule 15, "Financial Responsibility and Operational Capability," is being amended to make clear that additional clearing fund payments that may be assessed on members may also include charges relative to such same day settling trades.

In addition, the rule change makes a number of technical corrections, including the following:

(1) It defines the terms "Settlement Date"<sup>15</sup> and "settlement day"<sup>16</sup> which are used throughout NSCC's Rules & Procedures and makes clear that the Consolidated Trade Summary is issued on each day that is a settlement day.

(2) It revises Procedure I, "Introduction," to delete references to SIAC as NSCC's facilities manager and to codify NSCC's longstanding established practice of setting data submission thresholds to minimize data transmission errors and data field requirements.

(3) It changes the heading of Procedure II, "Trade Comparison Service," to "Trade Comparison and Recording Service" to reflect that this procedure covers trade recording as well as trade comparison.

NSCC intends to implement changes to the CNS system on or about August 6, 2004. At that time, all CNS Rewrite functionality will be implemented except for processing same day settling trades and the two Supplemental Consolidated Trade Summaries that support same-day trade settlement. NSCC intends to begin processing same day settling trades and the supporting Supplemental Consolidated Trade Summaries on or about August 19, 2004.<sup>17</sup>

### III. Discussion

Section 17A(b)(3)(F) of the Act requires among other things that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.<sup>18</sup> The Commission finds that NSCC's proposed rule change is consistent with this requirement because the changes being made to the NSCC's CNS system will promote the prompt and accurate clearance and settlement of securities transactions by providing greater functionality and capacity and by allowing members to focus less attention on exception processing.

### 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.

<sup>15</sup> "Settlement Date" is defined as the date specified for a transaction to settle.

<sup>16</sup> "Settlement day" is defined as any business day on which settlement may be made through NSCC's facilities.

<sup>17</sup> The dates for implementation in the Notice have been adjusted. E-mails from Merrie Witkin, NSCC (June 10, 2004 and June 14, 2004).

<sup>18</sup> 15 U.S.C. 78q-1(b)(3)(F).

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>19</sup> that the proposed rule change (File No. SR-NSCC-2004-01) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>20</sup>

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04-16561 Filed 7-20-04; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50021; File No. SR-NYSE-2004-38]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. Exempting Bonds from the Order Tracking System Requirements (NYSE Rule 132B)

July 14, 2004.

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> notice is hereby given that on July 7, 2004, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On July 13, 2004, the NYSE amended the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to grant accelerated approval of the proposed rule change, as amended.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

This proposal is to amend NYSE Rule 132B to eliminate the requirement to capture order information for listed bonds. The text of the proposed rule change is below. Proposed new language is *italicized*.

#### Rule 132B Order Tracking Requirements

1. With respect to any security listed on the New York Stock Exchange *except bonds*, each member and member organization shall:

\* \* \* \* \*

(Remainder of rule unchanged.)

#### 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 NYSE 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 III below. The Exchange 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

*Background.* NYSE Rules 132A, B and C<sup>4</sup> ("OTS rules") require that members and member organizations record details of every customer and proprietary order in any security listed on the Exchange from the time of receipt or origination through the time of execution or cancellation. The purpose of these requirements is to provide a complete audit trail for orders in Exchange-listed securities. Thereby, the Exchange is able to provide an accurate, time-sequenced record of orders, quotations and transactions beginning with the receipt of an order by any NYSE member firm and further documenting the life of the order through the process of execution or cancellation of that order.

*Rule 132A.* NYSE Rule 132A requires members and member organizations to synchronize the business clocks used to record the date and time of any event that the Exchange requires to be recorded. The Exchange requires the date and time of orders in Exchange-listed securities to be recorded. The Rule also requires members and member organizations to maintain the synchronization of this equipment in conformity with procedures prescribed by the Exchange.

*Rule 132B.* NYSE Rule 132B prescribes requirements and procedures

with respect to orders in any security listed on the Exchange received or originated by a member or member organization. It requires a member or member organization to immediately record data elements as detailed in the Rule. If an order is transmitted to another member or member organization, is transmitted to another department of the same member, or is modified or cancelled, information detailed in the Rule must be recorded. Additionally, the recipient of the order must record the order details as provided in the Rule.

Orders submitted to the Floor via an exchange or proprietary system that comply with existing NYSE Rule 123(e)<sup>5</sup> (requiring the electronic capture of orders on the floor via NYSE's Front End Systemic Capture Program) are exempt from recording the order details from the point at which the order arrives on the Floor. The transmitting and receiving floor members, however, are required to record the unique Order ID, the transmitting firm, and the recipient firm.

*Rule 132C.* Members and member organizations must record and retain the order details as required by the Rule, and upon Exchange request, submit such details to the Exchange. The Exchange makes requests for order tracking information on an as-needed basis in order for the Exchange to carry out its surveillance and regulatory functions. Members and member organizations are required to submit the data in an automated format.

*Proposed Exemption for Listed Bonds.* The Exchange proposes to exempt listed bonds from the requirements of the OTS rules. As adopted, the OTS rules apply to any security<sup>6</sup> listed on the Exchange, which includes bonds. However, at the time the OTS rules proposal was promulgated, the Exchange was focusing its attention on the application of the OTS rules to equity securities. The Exchange believes there are several reasons why the exclusion of bonds from the OTS rules would not be against the public interest and would not diminish the protection of investors. These are explained below.

*Cost and Effectiveness.* The Exchange represents that its member organizations would have to make extensive changes

<sup>5</sup> NYSE Rule 123, Record of Orders, requires that all orders in any security traded on the Exchange be entered into a database before they can be represented in the Exchange's auction market.

<sup>6</sup> NYSE Rule 3 defines the terms "security" and "securities" as having the meaning given those terms in the Act and the General Rules and Regulations thereunder. Section 3(a)(10) of the Act, in turn, defines "security" as any "note, stock, treasury stock, security future, bond, debenture," etc. (emphasis added).

<sup>19</sup> 15 U.S.C. 78s(b)(2).

<sup>20</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> See letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Commission, dated July 13, 2004 ("Amendment No. 1"). Amendment No. 1 revised the proposed rule text. Amendment No. 1 is incorporated into this notice.

<sup>4</sup> See Securities Exchange Act Release No. 47689 (April 17, 2003), 68 FR 20200 (April 24, 2003) (SR-NYSE-99-51) and NYSE Information Memo 03-26 (June 10, 2003) for further information on NYSE Rules 132A, B, and C.