

calculated by Amex and published via the facilities of the CTA on a 15-second delayed basis throughout ISE's trading hours. As mentioned above, the Trust's Web site provides information relating to the value of the Shares such as the prior business day's closing NAV, the reported closing price, and daily trading volume.

The Commission also believes that the Exchange's trading halt rules are reasonably designed to prevent trading in the Shares when transparency is impaired. If the listing market halts trading when the IIV is not being calculated or disseminated, the Exchange would halt trading in the Shares pursuant to ISE Rule 2123(e).

The Commission notes that, if the Shares should be delisted by the listing exchange, the Exchange would no longer have authority to trade the Shares pursuant to this order.

In support of this proposal, the Exchange has made the following representations:

1. The Exchange believes that its surveillance procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules.

2. Prior to the commencement of trading, the Exchange would inform EAMs in a Regulatory Information Circular of the special characteristics and risks associated with trading the Shares.

3. ISE would require its members to deliver a prospectus or product description to investors purchasing the Shares prior to or concurrently with a transaction in the Shares.

This approval order is based on the Exchange's representations.

The Commission finds good cause for approving this proposal before the thirtieth day after the publication of notice thereof in the **Federal Register**. As noted previously, the Commission previously found that the listing and trading of the Shares on Amex is consistent with the Act and that the trading of the Shares pursuant to UTP by NYSE Arca and Nasdaq is consistent with the Act.<sup>22</sup> The Commission presently is not aware of any regulatory issue that should cause it to revisit these findings or would preclude the trading of the Shares on the Exchange pursuant to UTP. Therefore, accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for the Shares.

<sup>22</sup> See *supra* at notes 5 and 6.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>23</sup> that the proposed rule change (SR-ISE-2007-102) as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>24</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

[FR Doc. E7-23611 Filed 12-5-07; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56865; File No. SR-NSCC-2007-06]

### Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change To Modify the Hearing Procedures Afforded to Members and Applicants for Membership and Harmonize Them With Similar Rules of Its Affiliates

November 29, 2007.

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 April 30, 2007, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change 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 parties.

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

The proposed rule change seeks (1) to modify NSCC's rules regarding hearing procedures afforded to members and applicants for membership and (2) where practicable or beneficial, to harmonize them with similar rules of NSCC's affiliates, The Depository Trust Company ("DTC") and the Fixed Income Clearing Corporation ("FICC").

<sup>23</sup> 15 U.S.C. 78s(b)(2).

<sup>24</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.

## 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 these statements.<sup>3</sup>

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

##### (1) Minor Rule Violation Plan

In 1984, the Commission adopted amendments to Rule 19d-1(c) under the Act<sup>4</sup> that allow self-regulatory organizations to adopt with Commission approval plans for the disposition of minor violations of rules.<sup>5</sup>

Currently under NSCC's rules, a member or applicant subject to disciplinary action has a right to a hearing before a panel comprised of members of NSCC's Credit and Market Risk Management Committee regardless of the severity of the action for which the member or applicant is being disciplined.<sup>6</sup> Because some rule violations are not sufficiently serious to merit Board review, NSCC is proposing to adopt a Minor Rule Violation Plan within the meaning of Rule 19d-1(c)(2) of the Act for those rule violations NSCC deems minor. Consistent with Rule 19d-1(c)(2) of the Act, NSCC would designate those rule violations for which a fine may be assessed in an amount not to exceed \$5,000 as minor rule violations. If a member were to dispute a fine imposed by NSCC by filing a written request for hearing and a written statement, NSCC management would have the authority to waive the fine. NSCC management would notify the Board of Directors (or a Committee authorized by the Board of Directors) of its determination to waive the fine and would provide the reasons for the

<sup>3</sup> The Commission has modified the text of the summaries prepared by NSCC.

<sup>4</sup> 17 CFR 240.19d-1(c).

<sup>5</sup> Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984) [File No. S7-983A].

<sup>6</sup> If the action or proposed action of NSCC as to which the hearing relates has been taken or has been proposed to be taken by the Credit and Market Risk Management Committee, the members of the panel shall be drawn from members of the Executive Committee of NSCC's Board of Directors. See Rule 37 (Hearing Procedures), Section 2.

waiver. The Board or Committee could in its discretion decide to reinstate any fine waived by NSCC management. If NSCC management were not to waive the fine, the member could appeal the decision to a panel comprised of NSCC officers ("Minor Rule Violation Panel").

#### (2) Hearings for All Other Violations and Minor Rule Violation Appeals

For matters involving (i) an alleged violation of an NSCC rule for which a fine in an amount of over \$5,000 is assessed, (ii) applicants for membership, or (iii) other disciplinary actions to which the Minor Rule Violation Plan would not apply or for appeals from a Minor Rule Violation Panel decision adverse to a member or applicant, the member or applicant would be entitled to a hearing before a panel comprised of three individuals of the NSCC Board of Directors (or their designees) appointed by the Chairman of the NSCC Board. Decisions of the panel would be final; however, the full Board of Directors would retain the right to modify any sanction or reverse any decision of the Board panel that was adverse to the member or applicant.

Currently with respect to hearings, a member or applicant is afforded the opportunity to be heard and may be represented by counsel if desired. A record is kept of the hearing, and at the discretion of the Board panel, the associated cost may be charged in whole or part to the member or application in the event that the decision is adverse to the member or applicant. The member or applicant is advised of the Board panel's decision within ten business days after the conclusion of the hearing. These procedures would also apply with respect to the Minor Rule Violation Plan.

#### (3) Administrative Changes: Uniformity of Time Frames

The proposed rule changes seek to implement uniform time periods among NSCC, DTC, and FICC governing actions a member or applicant would be required to take in order to request a hearing. The deadlines a member or applicant must adhere to in order to request a hearing currently vary between NSCC, DTC, and FICC. Under the proposed rule change, a member or applicant would have five business days, or two business days in the case of summary action taken against the member or applicant pursuant to Rule 46,<sup>7</sup> from the date on which NSCC first informs it of a sanction or a denial of

membership in which to request a hearing.

Within seven business days, or three business days in the case of a summary action being taken against the member or applicant, after filing a request for a hearing with NSCC, the member or applicant would be required to submit to NSCC a clear and concise written statement setting forth the action or proposed action of NSCC with respect to which the hearing is requested, the basis for objection to such action, whether the member or applicant intends to attend the hearing, and whether the member or applicant chooses to be represented by counsel at the hearing. These proposed time frames would be consistent with time frames being proposed by DTC and FICC.

#### (4) Pending Changes From NSCC Rule Filing SR-NSCC-2006-17

The current time frame for an applicant or member to request a hearing appears in the following rules: Rule 2 ("Members"), Rule 3 ("Lists to Be Maintained"), Rule 51 ("Fund Member"), Rule 54 ("Settling Bank Only Members"), Rule 56 ("Insurance Carrier/Retirement Services Member"), and Rule 60 ("TPA Member").<sup>8</sup> Each of those rules is pending deletion as part of rule filing SR-NSCC-2006-17. Accordingly, in the event that this filing is approved prior to SR-NSCC-2006-17, the time frame for an applicant or member to request a hearing that appears in those rules will be deleted.

#### (5) Implementation of the Proposed Changes

The proposed changes would be implemented upon approval of this proposed filing by the Commission. Members would be advised of the implementation through an NSCC Important Notice.

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act<sup>9</sup> and the rules and regulations thereunder because the adoption of a Minor Rule Violation Plan furthers the statutory objective of providing a fair procedure for disciplining members and will provide NSCC with the ability to impose meaningful sanctions for those rule violations that do not necessarily rise to a level meriting a full disciplinary proceeding. Accordingly, the proposed rule change promotes the

prompt and accurate clearance and settlement of securities transactions.

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

NSCC does not believe that the proposed rule change will have any impact or 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 relating to the proposed rule change have not been solicited or received. 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 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. 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-NSCC-2007-06 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NSCC-2007-06. 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

<sup>7</sup> Examples of a summary action are a suspension of a member or restriction of a member's access to services as described in Rule 46 ("Restrictions on Access to Services").

<sup>8</sup> The current time frame for an applicant or member to request a hearing also appears in Rule 45 ("Notices"). This proposed rule filing would delete that reference also.

<sup>9</sup> 15 U.S.C. 78q-1.

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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings also will be available for inspection and copying at the principal office of NSCC and on NSCC's Web site at [http://www.dtcc.com/downloads/legal/rule\\_filings/2007/nsc/2007-06.pdf](http://www.dtcc.com/downloads/legal/rule_filings/2007/nsc/2007-06.pdf). 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-NSCC-2007-06 and should be submitted on or before December 21, 2007.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56851; File No. SR-NYSE-2007-106]

### **Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, as Modified by Amendment No. 2, Relating to Exchange Rule 103A(a)(3) To Address Changes in the Way the Exchange Delivers Education Programs to its Members and To Clarify That the Mandatory Education Requirement Applies to All Individuals Qualified To Use a Trading License**

November 28, 2007.

Pursuant to section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 ("Act")

and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 16, 2007, the New York Stock Exchange LLC ("NYSE" or the "Exchange") 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 substantially prepared by the Exchange. The NYSE has designated the proposed rule change as one concerned solely with the administration of the Exchange pursuant to section 19(b)(3)(A)(iii) of the Act,<sup>3</sup> and Rule 19b-4(f)(3) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. On November 26, 2007, the Exchange submitted Amendment No. 1 to the proposed rule change. The Exchange withdrew Amendment No. 1 on November 27, 2007. The Exchange submitted Amendment No. 2 to the proposed rule change on November 27, 2007.<sup>5</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

NYSE is proposing to amend Rule 103A(a)(3) to address changes in the way the Exchange delivers education programs to its members and to clarify that the mandatory education requirement applies to all individuals qualified to use a trading license, and not just to members who are active on the trading floor.

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

In its filing with the Commission, 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 IV below. NYSE 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 Exchange is proposing to amend NYSE Rule 103A to reflect certain changes to how the Exchange delivers its continuing education program, and to reflect changes to the Exchange's membership structure, which affects who must complete the program.

Since its inception, the Exchange's Floor Member Continuing Education Program ("FMCE Program"), which NYSE Regulation manages, has evolved from providing semi-annual stand-up presentations to delivering computer-based educational modules in a learning laboratory. Because of limitations associated with these delivery methods, NYSE Regulation is currently upgrading the FMCE Program to permit more efficient and cost-effective delivery to participants via the Internet.

In connection with these changes, the Exchange is proposing to amend Rule 103A(a)(3) to remove the reference to "semi-annual" education programs, and is proposing to shorten the time in which program participants must complete the program elements. In addition, due to changes in the NYSE's membership structure, in which one trading license may be used by multiple qualified individuals over the course of a year, the Exchange is proposing to amend Rule 103A(a)(3) to clarify that the education requirement applies to all individuals qualified to use a trading license, not just those who are actively working as "members" on the floor.

##### **Background**

NYSE Rule 103A requires the Exchange to provide, and Exchange Floor members to take, continuing education. Over the years, the method by which the Exchange delivered the required education components has evolved from in-person lectures to large groups of members to individualized computer-assisted training in a learning laboratory setting. That evolution reflected an ongoing assessment by the Exchange of the most efficient way to deliver timely continuing education and training to a large group of Floor members.

When the Exchange delivered the FMCE Program in person or in a learning laboratory, participants were required to participate in these meetings during extended business hours. The current language of Rule 103A(a)(3) reflects meeting room and laboratory space limitations by requiring the Exchange to deliver the FMCE Program

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

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

<sup>4</sup> 17 CFR 240.19b-4(f)(3).

<sup>5</sup> In Amendment No. 2, the Exchange made a technical change to the rule text.

<sup>10</sup> 17 CFR 200.30-3(a)(12).

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