

disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Exchange will obtain a representation on behalf of the Trusts that the per-Share net asset values for the Trusts will be calculated daily and made available to all market participants at the same time. Additionally, the Exchange will halt trading in the Shares if the value of each Trust or the per-share values of each of the Up Trading Shares or the Down Trading Shares are not disseminated daily to all market participants at the same time. The Commission also notes that, pursuant to proposed Amex Rule 1402, the Exchange will remove from listing the Up MacroShares or the Down MacroShares under certain circumstances, including if: (1) The intraday level of the Applicable Reference Price of Crude Oil is no longer calculated or available on at least a 15-second delayed basis during the time the Shares trade on Amex from a source unaffiliated with the sponsor, custodian, depositor, Up Trading Trust, Down Trading Trust or the Exchange that is a major market data vendor; or (2) the IV of the Share is no longer made available on at least a 15-second delayed basis by a major market data vendor during the time the shares trade on the Exchange.

The Exchange has represented that the Shares are equity securities subject to the Exchange's rules governing the trading of equity securities. In support of this proposal, the Exchange has made the following representations:

(1) The Exchange's surveillance procedures are adequate to properly monitor Exchange trading of the Shares and to deter and detect violations of Exchange rules and applicable federal securities laws.

(2) Prior to the commencement of trading, the Exchange will inform its members and Member Organizations an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (1) What the Shares are; (2) the procedures for purchases and paired optional redemptions of Shares; (3) prospectus delivery requirements that are applicable in connection with the purchase of newly issued Shares by investors; (4) applicable Amex rules; (5) dissemination of information regarding the underlying value of each Trust and the share of that underlying value allocable to one Up MacroShare and one Down MacroShare; (6) trading information; (7) suitability obligations of

members with respect to recommended transactions to customers in the Shares; (8) that the Shares are subject to various fees and expenses described in the Registration Statement on Form S-1 for the Up MacroShares or the Down MacroShares, as applicable;²³ and (9) any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act.

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

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5) of the Act.²⁴

C. Acceleration

The Commission finds good cause for approving the proposed rule change before the 30th day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission notes that the Shares are substantially similar to another product previously approved for listing and trading on the Exchange.²⁵

Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act, to approve the proposed rule change on an accelerated basis.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁶ that the proposed rule change (SR-Amex-2008-36) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁷

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8-15206 Filed 7-3-08; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58053; File No. SR-NSCC-2008-03]

Self-Regulatory Organizations; The National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Support the Processing of Instructions for the Transfer or Reallocation of Underlying Investment Options Within a Variable Insurance Contract

June 26, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on June 19, 2008, 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

NSCC proposes to amend its rule in order to enhance its insurance services to support the processing of instructions for the transfer or reallocation of underlying investment options within a variable insurance contract.²

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.³

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

1. Purpose

The purpose of the proposed rule change is to enhance NSCC's insurance

²³ See *supra* note 15.

²⁴ 15 U.S.C. 78f(b)(5).

²⁵ See *supra* note 20.

²⁶ 15 U.S.C. 78s(b)(2).

²⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² Changes are to the rule text that appears in the electronic manual of NSCC found at <http://www.nsc.com/legal/>.

³ The Commission has modified the text of the summaries prepared by the NSCC.

service in order to support the processing of instructions for the transfer or reallocation of underlying investment options within a variable insurance contract. Under the proposed rule change, the new enhancement will be referred to as "Fund Transfers" and will be available within NSCC's current In-Force Transactions service of NSCC's Insurance and Retirement Processing Service ("IPS," formerly called the Insurance Processing Service). NSCC's current IPS provides a centralized communication link that connects participating insurance companies with intermediaries such as broker-dealers, banks and insurance agencies that distribute their insurance products. The current platform supports the exchange of information and settlement of monies at various points through the insurance contract initiation and servicing cycle, for both fixed and variable insurance products.⁴

Development and implementation of the new Fund Transfer process is the second phase of automating and standardizing a broad range of in-force policy transactions, starting in 2005 with ACATS for insurance and expanding later to the communication of changes in internally registered representatives and brokerage account numbers.⁵ The automation of in-force policy transactions is consistent with the insurance industry's straight-through processing objectives and the continued efforts to mainstream insurance products with other financial products.

A request for a fund transfer is initiated by a distributor of the insurance contract, on behalf of the contract owner, and transmitted to the insurance company. The transaction requires validation by both the distributor and the insurance company, enabling each to review the transaction request against its own legal and other product and customer rules applicable to the transaction.

Prior to initiating a fund transfer request, the distributor generally must access current contract information to determine if the fund transfer request can be made with respect to a particular

contract, including fund balances held under the contract and applicable rules. Accordingly, the fund transfer functionality includes a real-time inquiry and response transaction from the distributor to the insurance company that allows the insurance company to provide a current "snapshot" of the contract. NSCC's Positions and Values ("POV") service may also be used in conjunction with the fund transfer request. Receipt of the current contract information from the insurance company permits the distributor to review the transfer in light of suitability and compliance requirements.

Following the values inquiry and response, the distributor initiates a fund transfer request transaction with the insurance company through NSCC's Fund Transfer functionality. NSCC performs industry-defined edits as to transaction format and, once the transaction passes NSCC edit process, it is forwarded to the insurance company. The insurance company has the opportunity to review the requested transfer against its rules and applicable suitability and compliance requirements and its arrangements with the transmitting distributor. The insurance company responds back to the distributor through NSCC with an acceptance or rejection of the fund transfer request. This message is checked against NSCC's edits as to transaction form and sent to the distributor.

When the fund transfer is successfully processed by the insurance company, it sends a "success" message through the fund transfer functionality to the distributor. Alternatively, the insurance company may send a failure message to the distributor if the requested transaction fails (for instance, if a price change in an underlying fund results in a value that is outside of the amount allowed for a transfer, after the request is initiated) or send a pending message.

The fund transfer functionality also supports a cancellation transaction to allow the distributor to request the cancellation of a funds transfer request. The insurance company can accept the cancellation request, or it can reject it (if, for example, the insurance company does not allow the cancellation under the reject reason code provided by the distributor). Additional fund transfer functionality may be developed as the system is enhanced to accommodate distributor and insurance company requirements.

The fund transfer functionality is intended to replace current processes used by distributors today to request a transfer of assets within the insurance

contract, such as on-line insurance company website requests, telephone, fax and e-mail. Automation of the process will increase efficiency, create an automated record of the transaction, and facilitate monitoring compliance with regulatory requirements.⁶ By centralizing all fund transfer requests initiated by registered representatives through one application at NSCC, a broker-dealer should be better able to monitor the activity of its registered representatives to assure compliance with regulatory requirements. For example, to facilitate compliance with requirements under Rule 22c-1 of the Investment Company Act of 1940 ("Investment Company Act"), the fund transfer request message from the distributor to the insurance company must contain mandatory message fields for the transaction date and transaction time, including the date and time the distributing broker-dealer received the funds transfer request from its customer. Pursuant to arrangements between a distributing broker-dealer and the insurance company that issued the variable contract, the insurance company may determine to accept the broker-dealer's receipt of the order from its customer as the time the order was received for purposes of Rule 22c-1.⁷

2. Statutory Basis

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act⁸

⁶ Variable insurance products are "securities" for purposes of federal securities law, the sale of which is subject to regulation by the Securities and Exchange Commission and the Financial Industry Regulatory Authority ("FINRA", successor to the National Association of Securities Dealers, or NASD). In addition, investment options (or "funds") included within a variable insurance contract are typically separate accounts that are, absent an exemption, required to register as investment companies under the Investment Company Act. Fund transfers must therefore also comply with relevant provisions of the Investment Company Act and the regulations promulgated thereunder.

⁷ Rule 22c-1 under the Investment Company Act, often referred to as the 'forward pricing rule', requires that orders in investment company shares be priced based upon the current net asset value (NAV) next computed after receipt of the order to buy or redeem shares (17 CFR 270.22c-1(a)). The receipt of an order for the purchase or redemption of mutual fund shares by a distributing broker-dealer, from its customer, is generally deemed receipt of the order in investment company shares for purposes of Rule 22c-1. This practice is generally subject to the provisions of the distribution agreement between the fund and the distributing broker-dealer. The NSCC funds transfer working group has developed a model agreement provision that can be adopted by the insurance company and the broker-dealer, based on the analogous provisions relating to the receipt of orders contained in the distribution agreement between a mutual fund company and a distributing broker-dealer.

⁸ 15 U.S.C. 78q-1.

⁴ IPS also supports processing of non-insurance retirement products that may be offered by a broker-dealer, in which case the funds transfer functionality would support the communication of changes in investment options offered within a retirement or other benefit program for which a broker-dealer is the plan administrator or custodian, supporting communications between this broker-dealer and with the distributing broker-dealer.

⁵ See Securities Exchange Act Release Nos. 51753 (May 27, 2005), 70 FR 32859 (June 6, 2005) [File No. SR-NSCC-2005-02], and 52343 (August 26, 2005), 70 FR 52461 (September 2, 2005) [File No. SR-NSCC-2005-09].

and the rules and regulations thereunder applicable to NSCC because the proposed rule change should promote processing efficiencies between insurance companies and distributors of variable insurance products, thereby facilitating the prompt and accurate processing of securities transactions.

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

NSCC does not believe that the proposed rule change will impose 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

No written comments relating to the proposed rule change have 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

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act⁹ and Rule 19b-4(f)(6)¹⁰ thereunder in that it (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; (iii) by its terms, does not become operative for 30 days after the date from which it was filed (June 19, 2008), or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. At any time within sixty days of the filing of such 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.

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. Please include File Number SR-NSCC-2008-03 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR-SCC-2008-03. 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 Room, 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, <http://www.nsc.com/legal/>. 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-2008-03 and should be submitted on or before July 28, 2008.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.¹¹

Florence E. Harmon,
Acting Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-58034; File No. SR-NYSEArca-2008-49]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving Proposed Rule Change To Amend Minor Rule Plan and Certain Underlying Rules

June 26, 2008.

I. Introduction

On May 14, 2008, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend NYSE Arca Rule 10.12 (Minor Rule Plan) ("MRP") and related rules that underlie the MRP. The proposed rule change was published for comment in the **Federal Register** on May 23, 2008.³ The Commission received no comments on the proposal. This order approves the proposal.

II. Description of the Proposal

The Exchange proposed to amend its Minor Rule Plan and related rules that underlie the MRP, including Rules 9.2(c) (Customer Records), 11.1 (Adherence to Law), and 11.18 (Supervision).

Rule 9.2(c)—Customer Records

The Exchange proposed to change Rule 9.2(c) by adding the word "current," to clarify and reiterate the obligation that firms with customer accounts must not only keep records of their customer accounts, but also keep them current.

Rule 11.1—Adherence to Law and Good Business Practices

The Exchange designated existing Rule 11.1 as Rule 11.1(a) and substituted the word "fair" in the rule's requirement that certain actions of "any OTP Holder or OTP firm shall at all times comply with fair and equitable principles of trade" by the word "just." The Exchange also proposed new Rule 11.1(b), which would require all OTP Holders and firms, their associated persons, and other participants to adhere to the principles of good business practice in the conduct of their business operations.⁴ Violations of Rule

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 57827 (May 15, 2008), 73 FR 30179 ("Notice").

⁴ This rule is based on the current NYSE Rule 401(a).

⁹ 15 U.S.C. 78s(b)(3)(A)(iii).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 17 CFR 200.30-3(a)(12).