

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

Written comments were neither solicited nor received.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)<sup>9</sup> of the Act and Rule 19b-4(f)(6) thereunder.<sup>10</sup>

At any time within 60 days of the filing of the proposed 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. Nasdaq has provided the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change.

Nasdaq believes that the proposed rule change does not significantly affect the protection of investors or the public interest because it merely eliminates erroneous citations that, if left in the rule text, would cause investor confusion.

Nasdaq requests that the Commission waive the 30-day pre-operative waiting period contained in Exchange Act Rule 19b-4(f)(6)(iii).<sup>11</sup> Nasdaq requests this waiver so that these corrections can be both immediately effective and operative, thus minimizing any confusion that may be caused by the erroneous citations. The Commission notes the proposed rule changes make technical non-substantive changes to Rule 9557. As noted above on January 20, 2010, Nasdaq filed a proposed rule change to make conforming changes to its rules, which included adopting a new Rule 4000A series<sup>12</sup> and certain amendments to Rules 9557 and 9559.<sup>13</sup> The proposed changes were

immediately effective and became operative on February 19, 2010. The Commission believes the earlier operative date is consistent with the protection of investors and the public interest because the proposed rule change permits Nasdaq to implement the rule without further delay and in a timely manner for the operative date of the financial responsibility rules.<sup>14</sup>

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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-NASDAQ-2010-026 on the subject line.

#### *Paper Comments*

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

All submissions should refer to File Number SR-NASDAQ-2010-026. 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 Web site viewing and printing 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 filing also will be available for inspection and copying at the principal office of

Nasdaq. 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-NASDAQ-2010-026 and should be submitted on or before March 29, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>15</sup>

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

[FR Doc. 2010-4734 Filed 3-5-10; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61618; File No. SR-NSCC-2010-01]

### Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving Proposed Rule Change To Eliminate Guarantee of Payment in Connection With the Envelope Settlement Service

March 1, 2010.

#### I. Introduction

On January 4, 2010, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-NSCC-2010-01 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> The proposed rule change was published for comment in the **Federal Register** on January 29, 2010.<sup>2</sup> No comment letters were received on the proposal. This order approves the proposal.

#### II. Description

NSCC's the Envelope Settlement Service ("ESS") allows an NSCC member to physically deliver through the facilities of NSCC a sealed envelope<sup>3</sup> containing securities and such other items as NSCC may permit from time to time to a specified receiving member. NSCC then delivers the envelope to the receiving member. ESS is provided for

<sup>15</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> Securities Exchange Act Release No. 61415 (January 25, 2010), 75 FR 4896.

<sup>3</sup> Rule 9 provides that except as NSCC may determine to be appropriate or necessary, NSCC will not examine the contents of the envelopes or verify the amounts of money shown on the credit list, and it shall not be responsible with respect thereto except to deliver the envelopes accepted by it to the authorized representatives of the members to whom they are addressed.

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>12</sup> Nasdaq currently has rules under its 4000 series, so to mirror the changes made by FINRA as closely as possible, Nasdaq created a new Rule 4000A series.

<sup>13</sup> See *supra*, note 3.

<sup>14</sup> For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

primarily pursuant to Rule 9 and Addendum D with related provisions in Addendum D with related provisions in Addendum K and Procedure XV. The primary substantive changes of this proposed rule change are in Rule 9, Addendum D, and Addendum K with a conforming change to Procedure XV. Technical clean-up changes are also being made in each.

The delivering member must attach to each envelope, a credit list (in duplicate), which reflects the total money value, if any, of the envelope's contents. If after receipt of the envelope NSCC determines that the envelope is properly listed on the accompanying credit list, NSCC stamps the duplicate credit list and makes it immediately available to the delivering member's representative. An envelope listed on the credit list shall be deemed to have been accepted by NSCC when the duplicate credit list is stamped.

As a related feature of ESS, the payment shown on the credit list is processed as part of the members' daily end of day net money settlement obligations in reliance on the agreement between the delivering and receiving parties outside NSCC that the amount listed is the contract amount.

In order to protect the NSCC against the risk of member non-payment NSCC is amending Rule 9 and related provisions so that NSCC does not guarantee the payment obligation to the receiving member in an ESS delivery and so that the credits and debits of the payment amount of an envelope may be reversed. The payment reversal may be effected by NSCC even if the receiving member has taken possession of the envelope; however, if the receiving member has not yet taken possession of the envelope at the time of a payment reversal, NSCC will return the envelope to the delivering member. Any dispute between the delivering and receiving members must be resolved by them outside the facilities of the NSCC.

Changes to Rule 9 affirmatively provide that NSCC does not guarantee the payment obligation in ESS and that payment credits and debits may be reversed. Technical and conforming changes clarify the concepts of delivering and receiving members and that settlement processing is subject not only to the rights of NSCC in Section 2 of Rule 12 but also to the new reversal provision in Section 4 of Rule 9.

To conform to amended Rule 9, Addendum D is similarly being amended to state that ESS is not guaranteed and that payment credits and debits may be reversed as provided in Rule 9. Language making it clear that settlement processing is subject to the

rights of NSCC under new Section 4 of Rule 9 and Section 2 of Rule 12, was also carried over to Addendum D. Because Addendum D also covers other services for which no change is made by this filing, certain of the revisions to Addendum D clarify that the revisions are limited to ESS. Historical statements in Addendum D are being eliminated.

The change to Addendum K is to delete the provision whereby NSCC provided a guarantee for ESS and thereby deemed ESS to be a "System" within the meaning of Rule 4. Without the guarantee, ESS is not considered to be a "System." Consistent with the change, Procedure XV is modified so that when the clearing fund component titled "For Other Transactions" (that is, for other than CNS transactions and balance order transactions) is computed, ESS will not be included.

In considering the elimination of the guarantee, NSCC surveyed selected members and learned that they did not consider it vital that NSCC be responsible for their ESS payment obligations and that they do not rely on the NSCC to guarantee such payments. However, these members expressed a strong desire for NSCC to maintain the centralized delivery service. NSCC designed the proposed rule changes to meet the expressed need of certain members while reducing risk to NSCC and its members generally. NSCC believes that it is shifting the burden of risk to those that should bear it and to outside NSCC's facilities.

### III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act<sup>4</sup> and the rules and regulations thereunder applicable to NSCC. In particular, the Commission believes that by amending its rules, NSCC's exposure to potential losses from member defaults, insolvencies, mistakes, and fraud will be reduced and the risk of such potential losses will be appropriately shifted to the contracting members in an ESS transaction outside NSCC. The proposal is therefore consistent with the requirements of Section 17A(b)(3)(F),<sup>5</sup> which requires, among other things, that the rules of a clearing agency are designed to promote the prompt and accurate clearance and settlement of securities transactions.

### IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the

Act and in particular with the requirements of Section 17A of the Act<sup>6</sup> and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,<sup>7</sup> that the proposed rule change (File No. SR-NSCC-2010-01) be, and hereby is, approved.<sup>8</sup>

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>9</sup>

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

[FR Doc. 2010-4738 Filed 3-5-10; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61612; File No. SR-NYSE-2010-11]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC Amending NYSE Rule 123C(9)(a)(1) To Extend the Operation of the Pilot Operating Pursuant the Rule Until the Earlier of Securities and Exchange Commission Approval To Make Such Pilot Permanent or June 1, 2010

March 1, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that, on February 24, 2010, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. 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 Exchange proposes to amend NYSE Rule 123C(9)(a)(1) to extend the operation of the pilot operating pursuant the Rule until the earlier of Securities and Exchange Commission approval to make such pilot permanent or June 1, 2010. The text of the proposed

<sup>6</sup> 15 U.S.C. 78q-1.

<sup>7</sup> 15 U.S.C. 78s(b)(2).

<sup>8</sup> In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>9</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>4</sup> 15 U.S.C. 78q-1.

<sup>5</sup> 15 U.S.C. 78q-1(b)(3)(F).