

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

No written comments were either solicited or received.

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

After careful consideration, the Commission finds that the proposal is consistent with section 6(b)(5) of the Act.<sup>10</sup> Section 6(b)(5) of the Act requires that the rules of a national securities exchange promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposal is consistent with section 6(b)(5) because it will permit CHX members and order sending firms to utilize the services of GJVMS and other exempt clearing agencies to process depository eligible transactions.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register** because approval prior to the thirtieth day after publication of notice will allow CHX members and order sending firms to be able to use the confirmation and affirmation services of GJVMS. Because GJVMS has received an exemption from registration as a clearing agency, it does not constitute a "securities depository" under current CHX rules. Therefore, the CHX rules must be amended to allow CHX members and order sending firms to utilize the services of GJVMS, which is the only U.S. provider of confirmation and affirmation services. In addition, this rule change will make the CHX rule consistent with New York Stock Exchange Rule 387, National Association of Securities Dealers Rule 11860, and Municipal Securities Rulemaking Board Rule G-15.

### 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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 office of the CHX. All submissions should refer to File No. SR-CHX-2001-02 and should be submitted by November 19, 2001.

*It Is Therefore Ordered*, pursuant to section 19(b)(2) of the Act,<sup>11</sup> that the proposed rule change (File No. SR-CHX-2001-02) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 01-27129 Filed 10-26-01; 8:45 am]

**BILLING CODE 8010-01-M**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44968; File No. SR-NSCC-2001-07]

### Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving a Proposed Rule Change Relating to Buy-In Rules and Procedures

October 22, 2001.

On April 27, 2001, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-NSCC-2001-07) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> On April 30, 2001, NSCC filed an amendment to the proposed rule change. Notice of the proposal was published in the **Federal Register** on August 29, 2001.<sup>2</sup> No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

<sup>11</sup> 15 U.S.C. 78s(b)(2).

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

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

<sup>2</sup> Securities Exchange Act Release No. 44736 (August 22, 2001), 66 FR 45715.

## I. Description

NSCC is modifying its buy-in rules and procedures to further automate and improve the processing of buy-ins of CNS positions.<sup>3</sup> The revised procedures provide that a Buy-In Notice may be filed by an originator on successive days provided the succeeding Buy-In Notice does not specify a quantity of securities covered by the prior Buy-In Notice and the quantity of securities representing the sum of all Buy-In Notices does not exceed the member's total long position.<sup>4</sup>

The Retransmittal Notice is being revised to include the identity of the originator on the Retransmittal Notice so that the member owing securities can contact the originator to arrange delivery.<sup>5</sup> Regardless of any agreements that may have been entered into between a member owing securities and an originator, unless the originator notifies NSCC in a timely manner that its Buy-In Order should not be executed, members who receive Retransmittal Notices and do not satisfy them assume liability for the loss, if any, which occurs as a result of an originator's Buy-In Order.<sup>6</sup>

The revisions also require members to electronically transmit Buy-In Notices and Buy-In Orders through an automated format determined by NSCC thereby eliminating the practice of hand and facsimile deliveries. Similarly, NSCC will transmit through an automated format Retransmittal Notices to members.<sup>7</sup>

Members will be advised of the specific implementation date of the Buy-In changes prior to implementation.

## II. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.<sup>8</sup> The Commission believes that NSCC's rule change is consistent with this section because it will facilitate the prompt and accurate clearance and settlement of buy-in transactions by further automating and improving the processing of buy-ins.

<sup>3</sup> Changes are being made to: NSCC Rule 11, Sections 7(b) and (c); NSCC Procedure VII, section J; and NSCC Procedure X, section A. Also, proposed changes to NSCC Procedure VII, section E3 to conform its language to the language proposed in NSCC Procedure VII, section J.

<sup>4</sup> NSCC Procedure VII, section J.

<sup>5</sup> NSCC Rule 11, section 7(b).

<sup>6</sup> NSCC Procedure X, section A1.

<sup>7</sup> NSCC Rule 11, sections 7(b) and (c).

<sup>8</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>10</sup> 15 U.S.C. 78f(b)(5).

### III. 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 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-2001-07) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

[FR Doc. 01-27128 Filed 10-26-01; 8:45 am]

BILLING CODE 8010-01-M

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44962; File No. SR-NYSE-2001-42]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc., Establishing the Fees for NYSE OpenBook™

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 October 15, 2001, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III 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 Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange proposes to establish a set of fees in its NYSE OpenBook service, a new service in which subscribers may view limit orders contained in the NYSE limit order book.

#### 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 Exchange 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 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

NYSE OpenBook is a compilation of limit order data that the Exchange will provide to market data vendors, broker-dealers, private network providers, and other entities through a data feed. By enhancing the quality of the Exchange's market data, the Exchange believes that NYSE OpenBook would preserve and increase the benefits that the Exchange offers to its constituents. At the same time, the Exchange believes that the innovation of NYSE OpenBook serves two of the public policy goals of enhancing market transparency and fostering competition among orders and markets.

The Exchange represents that for every limit price, NYSE OpenBook will include the aggregate order volume. The Exchange will make the NYSE OpenBook data feed available through the Exchange's Common Access Point ("CAP") network. Initially, the Exchange will update NYSE OpenBook every ten seconds.

The Exchange is proposing two fees. First, the Exchange proposes to collect a fee equal to \$5,000 per month from each entity that elects to receive the NYSE OpenBook data feed. Second, the Exchange proposes to collect an end-user fee of \$50.00<sup>3</sup> per month for each terminal through which the end user is able to display the NYSE OpenBook.

The Exchange believes that NYSE OpenBook responds to the demand of trading desks of broker-dealers and institutional investors for depth-of-market data, a demand that results from decimalization's six-fold increase in the number of price points. Thus, initially, the Exchange anticipates that these trading desks will be the primary users

of NYSE OpenBook. As the Exchange gains experience with NYSE OpenBook, the Exchange notes that it may design a data product that is more suitable for use by registered representatives. Eventually, if a demand develops, the Exchange would consider designing a limit order data product suited for the retail, nonprofessional customer.

The Exchange represents that it will require each NYSE OpenBook data feed recipient to enter into the existing form of "vendor" agreement. That agreement will authorize the data feed recipient to provide NYSE OpenBook display services to its customers or to distribute the data internally. In addition, the Exchange represents that it will require each end-user that receives NYSE OpenBook displays from a vendor or broker-dealer to execute the existing NYSE "subscriber" agreement for that purpose.

The Exchange, acting for the Consolidated Tape Association ("CTA") and Consolidated Quotation ("CQ") Plan Participants, currently uses the vendor and subscriber agreements to make available equity quotes and prices. In addition, the Exchange, acting on its own behalf, uses the vendor and subscriber agreements to make available bond quotes and prices. Since the agreements are generic, the Exchange believes that the agreements would accommodate NYSE OpenBook. When the CTA and CQ Plan Participants adopted the current vendor forms of agreement, the Commission published the forms for public comment and approved them.<sup>4</sup>

The Exchange intends to supplement the vendor and subscriber agreements with additional terms that are unique to NYSE OpenBook. The first additional term to the vendor and subscriber agreements that the Exchange would provide requires a data-feed recipient that disseminates NYSE OpenBook outside of its organization may not integrate the limit orders of other markets or trading systems into the NYSE limit orders (*i.e.*, the data-feed recipient must display the NYSE's compilation in a separate "window"<sup>5</sup> marked "NYSE OpenBook™"). The Exchange notes that the window requirement is designed to maintain the

<sup>3</sup> The Exchange notes that although no other market participant currently offers a limit order data compilation, a few markets offer services that provide a point of reference. According to the Exchange, the NASDAQ Stock Market charges \$50 per terminal for its Nasdaq Level II service, which provides the best bid and offer from all market makers and ECNs (although it does not otherwise provide depth-of-book or depth-of-market information). The Exchange also believes that the London Stock Exchange charges \$144-\$219 per terminal for the price and size of limit orders in stocks that are included in the FTSE 250 index. Further, the Exchange believes that the Toronto Stock Exchange charges \$30 per terminal for its order books.

<sup>4</sup> See Securities Exchange Act Rel Nos. 22851 (January 31, 1986), 51 FR 5135 (February 11, 1986); 28407 (September 6, 1990), 55 FR 37276 (September 10, 1990).

<sup>5</sup> The Exchange notes that it is referring to a "window" for conceptual clarity. The requirement does not literally require a separate window, only separate displays. In other words, a vendor could format multiple displays in a single window.

<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.