

3.4. Specifically, CBOE Rule 3.4(g) provides that an applicant or associated person who has been denied membership or association pursuant to CBOE Rule 3.4(a), (b), or (c), or whose continuance in membership or association has been conditioned pursuant to CBOE Rule 3.4 (e), may appeal the MC's decision under Chapter XIX of the CBOE's rules. As noted above, Chapter XIX of the CBOE's rules provides for a hearing before a panel of the CBOE's Appeals Committee and for review of the panel's decision by the CBOE's Board or a committee of the Board. In addition, CBOE Rule 3.4(g) states that no decision of the MC under CBOE Rule 3.4(e) will take effect until the review procedures under Chapter XIX have been exhausted or the time for review has expired. Accordingly, the Commission believes that the CBOE's proposal preserves the rights of members and applicants to appeal decisions of the MC, thereby helping to ensure that the CBOE's rules provide fair procedures for disciplining members and associated persons, and for denials of membership, consistent with Section 6(b)(7) under the Act.

In addition, the Commission believes that it is reasonable for the CBOE to clarify that CBOE Rule 3.4(e) applies to associated persons as well as members in order to reflect accurately the CBOE's interpretation and application of CBOE Rule 3.4(e). Finally, the Commission believes it is reasonable to add CBOE Rule 3.4(f), requiring a member or associated person who becomes subject to a statutory disqualification to submit an application to the MC to continue in membership in order to facilitate the CBOE's compliance with Commission Rule 19h-1.

IV. Conclusion

It is therefore ordered, pursuant to § 19(b)(2) of the Act,¹² that the proposed rule change (SR-CBOE-96-73) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38556; File No. SR-NSCC-97-01]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Granting Approval of a Proposed Rule Change To Eliminate NSCC's Securities Transfer Service

April 29, 1997.

On January 22, 1997, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-NSCC-97-01) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ Notice of the proposal was published in the **Federal Register** on March 7, 1997.² No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

I. Description

The proposed rule change eliminates NSCC's Securities Transfer Service ("STS")³ by deleting NSCC Rule 42. NSCC developed STS in 1976 to provide assistance with the manual processing of securities certificates that were not eligible for deposit at the Depository Trust Company ("DTC"). STS was an optional service that could be used by full settling participants to transfer and reregister physical securities, including DTC ineligible items, through various transfer agencies in the United States and Canada. To use STS, participants first sent envelopes containing securities certificates to an NSCC office. Pursuant to the participant's transfer instructions, NSCC then forwarded the envelopes to the offices of the indicated transfer agents. Upon completion of the reregistration, transfer agents returned the certificates to NSCC's office for pick up. Participants could also use STS to deliver book closing items, legal transfers, and accommodation transfers. As a result of the elimination of STS, participants will process items directly through the appropriate transfer agent.

NSCC wants to eliminate STS because of a decrease in its usage.⁴ NSCC

expects to eliminate STS thirty business days after notification to participants that this proposed rule change is approved by the Commission.

II. Discussion

Section 17A(b)(3)(F)⁵ provides that the rules of a clearing agency must be designed to remove impediments to and perfect the mechanism for a national system for the prompt and accurate clearance and settlement of securities transactions. When STS was first begun, its use enhanced the transfer of physical securities. Because of the high volume processed through STS, it was more efficient for participants to deliver all of their physical certificates to one location, NSCC, instead of to many different transfer agents. In turn, because NSCC could aggregate multiple deliveries to transfer agents, it could reduce the costs of delivery.

However, because of the low volumes of securities being processed through STS, STS has become an inefficient means of transferring securities. Because NSCC does not receive enough items to aggregate deliveries to transfer agents, it cannot provide lower costs. Because STS no longer provides a more economical means by which participants can make deliveries to transfer agents, there no longer is any reason to have an extra securities movement in the process (i.e., the delivery to NSCC before delivery to transfer agents only increases the number of deliveries that must be made). Thus, requiring participants to send their securities directly to the transfer agents may result in a better national clearance and settlement system. Furthermore, by eliminating an inefficient service that is not used by many participants, NSCC may be better able to devote its resources to other services that provide greater efficiencies to the clearance and settlement process.

III. 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.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-

which encouraged the brokerage industry to move towards a book-entry registration environment. By 1994, STS' volume fell 82% to 120 securities certificates processed per day. STS processed just over twenty-five items per day in October 1996 or about an 80% decrease from its 1994 volume and a 96% decrease from its 1980s volume.

⁵ 15 U.S.C. 78q-1(b)(3)(F)

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 38352 (February 28, 1997), 62 FR 10602

³ STS is commonly referred to as the National Transfer Service.

⁴ During the 1980s, STS processed approximately 670 securities certificates per day. However, after 1987 volume fell dramatically because DTC began increasing the number of securities eligible for deposit and because of the Group of 30 initiatives

¹² 15 U.S.C. § 78s(b)(2).

¹³ 17 CFR 200.30-3(a)(12).

NSCC-97-01) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38553; File No. SR-NSCC-96-22]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Making Orders from Defined Contribution Plans Eligible For NSCC's Mutual Fund Service

April 28, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on December 26, 1996, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") and on March 18, 1997, amended the proposed rule change as described in Items I and II below, which items have been prepared primarily by NSCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change.

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

The proposed rule change amends NSCC's rules to permit transactions involving defined contribution plans to be cleared and settled through NSCC's mutual fund service.

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 such statements.²

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

The purpose of the proposed rule change is to amend NSCC's rules to allow NSCC to offer clearance and settlement services to mutual fund orders from defined contribution plans that are authorized under Section 414(i) of the Internal Revenue Code. According to NSCC, the Investment Company Institute ("ICI") on behalf of a committee of mutual fund companies, third party administrators ("TPAs"), and trustees of plans asked NSCC to provide clearance and settlement services to alleviate the processing and operational constraints that have occurred as a result of the rapid expansion of the defined contribution mutual fund business.

TPAs serve as the administrators of Plans, acting as the contact person for all participants. To provide better services and more flexible investment options, TPAs allow participants in their plans to select among investments in multiple mutual fund complexes. Participants in plans submit all purchase or redemption orders to the TPA which transmits the orders to the appropriate mutual fund. The TPA must communicate separately with each mutual fund to place orders to buy or sell shares. The TPA also must forward the trade information to the plan trustee which handles the plan's assets (e.g., the participants' money contributions). The trustee also must maintain communications with several parties (e.g., TPAs and mutual funds) to monitor trade activity and to satisfy multiple settlement obligations.

Under the proposed rule change, NSCC will permit TPAs to join NSCC as nonsettling members and to participate in the Fund/Serv, Networking, and the Mutual Fund Profile Service portions of NSCC Mutual Fund Services.³ TPA members will be able to initiate and to respond to orders and redemptions on behalf of their plans.⁴ Because

settlement obligations for the TPA's orders and redemptions are the responsibility of the trustee,⁵ the proposed rule change will require the TPA to submit to NSCC a form designating the appropriate trustee responsible for the settlement of its orders, and the trustee will be required to acknowledge its settlement responsibilities with respect to each TPA.

In order to become a TPA member and to maintain TPA membership, a TPA must demonstrate that its business and capabilities are such that it could reasonably expect material benefit from direct access to NSCC's services. In addition, NSCC must determine that the TPA: (1) Has a business history of a minimum of three years or has personnel with sufficient operational background and experience to ensure the ability of the TPA member to conduct such a business; (2) maintains adequate staff, physical facilities, books and records, and procedures so it is capable of handling mutual fund transactions with NSCC; and (3) is not subject to any statutory disqualification or an order of similar effect issued by court or agency.

If the TPA does not meet the operational standards of (1) Or (2) above, NSCC may approve the application if the TPA applicant demonstrates an acceptable alternative operational standard. To approve an application based upon an alternative operational standard, NSCC must determine that: (1) The alternative operational standard will not require any extended manual intervention on behalf of NSCC; (2) the TPA will be able to submit data within the time parameters established by NSCC; and (3) the alternative operational standard does not expose NSCC to undue risk.

In addition, NSCC will have the ability to examine the operational capability of TPA members on an ongoing basis. NSCC may also require the TPA member to provide adequate assurances of its operational capability, including: (1) Additional reporting by a TPA member of its operational condition at intervals and in detail as determined by NSCC and (2) assurances as may be required pursuant to NSCC's guidelines and procedures.

² The Commission has modified the text of the summaries prepared by NSCC.

³ As nonsettling members, TPAs may not participate in the Mutual Fund Commission Settlement portion of Mutual Fund Services.

⁴ In addition to the changes described below, the following NSCC rules will be amended to apply to TPA members: Rule 5 (General Provisions relating to authorized representatives), Rule 6 (Distribution Facilities), Rule 17 (Fine Payments), Rule 18 (Procedures For When the Corporation Declines or Ceases to Act), Rule 20 (Insolvency), Rule 22 (Suspension of Rules), Rule 24 (Changes for Services Rendered), Rule 26 (Bills Rendered), Rule

27 (Admission to Premises of the Corporation), Rule 29 (Qualified Securities Depositories), Rule 32 (Facsimile Signatures), Rule 33 (Procedures), Rules 34 (Insurance), Rule 35 (Financial Reports), Rule 36 (Rule Changes), Rule 37 (Hearing Procedures), Rule 39 (Special Representative/Index Receipt Agent), Rule 45 (Notices), Rule 46 (Restrictions on Access to Services), and Rule 48 (Disciplinary Proceedings).

⁵ The Trustee must be a NSCC participant bank or broker-dealer.

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).