

member firms' proprietary data, the service is designed so that firm-specific reports regarding daily trading volume figures will only be made available to the member firm itself, unless that member determines voluntarily to submit the information to the Daily Share Volume Report for a Security for disseminators to other NPDP subscribers.⁷ Additional firm specific reports such as the Monthly Compliance Report Cards and the ETJ will also be restricted so that NASD member firms will only be allowed to view their own information.

Concerns for data protection, and the system security requirements needed to encourage greater disclosure of proprietary trading statistics, also shaped Nasdaq's determination to make NPDP available only to NASD member firms and QIBs. Nasdaq believes that these groups contain the largest number of market participants who may benefit from the availability of the voluntarily-disclosed, Nasdaq-verified, trading volumes and related information available via the NPDP service. At the same time, these participants are also the most likely to possess the requisite staff and resources to comply with NPDP system security mandates. Moreover, the QIBs defined in Rule 144A consist of entities registered with various regulatory bodies which Nasdaq believes provides an additional layer of protection against the improper use of its members' proprietary trading data. Finally, the Rule 144A QIB definition sought to be relied on by Nasdaq has already been adopted by the Commission as a standard delineating the characteristics of institutional market participants. As such, Nasdaq believes that this standard is an appropriate starting point to evaluate the commercial viability of its new data package during the pilot program.⁸

Given the commercial uncertainties associated with the launching of any new data product, Nasdaq will be establishing this new service as a 12 month pilot program to evaluate user interest. As part of that evaluation, Nasdaq may experiment with the mix of information available in the NPDP by adding and deleting various components of the package based on user feedback.

identify the person accessing its system and to verify that the user is accessing the correct database.

⁷ Daily Share volume Reports for a Security, available for viewing by all system users, will be compiled based on voluntarily-submitted daily figures.

⁸ Nasdaq will monitor requests for the NPDP from institutes not meeting the QIB standard of Rule 144A with a view to expanding the availability of the data package to those institutions consistent with Nasdaq Trader.com's security limitations.

Nasdaq believes the proposed rule change is consistent with the provisions of Section 15A(b)(6)⁹ of the Act. Nasdaq believes that the NPDP pilot fosters cooperation and coordination with persons engaged in facilitating transactions in securities and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in 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

Written comments were neither solicited nor received.

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

Within 35 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 90 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent

⁹ Section 15A(b)(6) requires the Commission to determine that the rules of the association are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers, and in general, to protect investors and the public interest.

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. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by November 19, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 98-27908 Filed 10-16-98; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40540; File No. SR-NSCC-98-07]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change Expanding the Annuities Processing Service

October 9, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on June 24, 1998, the National Securities Clearing Corporation ("NSCC") 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 prepared primarily by NSCC. 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 proposed rule change will amend NSCC's rules to implement the second phase of its Annuity Processing Service ("APS").

¹⁰¹⁷ CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

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

On September 19, 1997, the Commission approved NSCC's rule filing establishing APS.³ APS provides a centralized communication link that connects participating insurance carriers with their multiple distribution channels, including broker-dealers, banks, and the broker-dealers' or banks' affiliated insurance agencies where appropriate (collectively, "distributors"). Phase one of APS provides NSCC's participants with the ability to send and receive daily information regarding underlying assets, and settlement of commission monies.⁴

The purpose of the proposed rule change is to implement phase two of APS. Phase two will provide distributors the ability to transmit to insurance carriers information concerning annuity applications and subsequent premium payments and to settle initial and subsequent premiums. In addition, insurance carriers will be able to transmit to distributors information relating to events and transactions occurring with respect to existing annuity contracts that have been issued by the insurance carriers.

The initial application and initial premium components of APS will allow distributors to transmit information related to annuity applications and will allow settlement of the initial premium payments through NSCC's money settlement process. Distributors will submit application information to NSCC, and NSCC will forward the application information to the insurance carrier designated as recipient by the distributor.

The subsequent premium component will allow distributors to transmit to insurance carriers information related to subsequent premium payments made by annuity contract owners. Distributors will submit subsequent premium information to NSCC, and NSCC will forward the subsequent premium information to the insurance carrier designated as recipient by the distributor.

The proposed rule change will provide that a distributor who has submitted application information or subsequent premium information to NSCC may also include date with respect to the annuity contract owner's initial premium payment or subsequent premium payment. If the information regarding the initial or subsequent premium payment is included with the application information or subsequent premium information, distributors and carriers will settle these payments through NSCC's money settlement system.

Distributors will initiate initial and subsequent premium payment settlement by submitting instructions to NSCC. All initial and subsequent premium payments submitted on a business day prior to that day's cutoff time (2:00 pm Eastern time) will settle on that day. Payments submitted on a business day after the cutoff time will settle on the next business day. Distributors will have the ability to cancel a previously submitted transaction on a business day as long as the cancel instruction is initiated prior to 2:00 pm Eastern time.

If a distributor submits an instruction to NSCC to withdraw application information and an initial premium payment had been originally submitted with that application information, then NSCC will not settle the initial premium payment. A distributor will not have the ability to cancel a subsequent premium payment that has been included with previously submitted subsequent premium information.

The financial activity reporting component will allow insurance carriers to transmit to distributors information and details about transactions and events that have occurred with respect to existing annuity contracts. An example of a transaction that may occur with respect to an annuity contract is a contract owner initiated transfer of underlying annuity contract assets from one subaccount to another subaccount. An example of an event is a dividend declared by an underlying fund. Distributors often use financial activity information for the monthly account statements they send to their customers.

The proposed rule change will provide that if the application information submitted by a distributor to NSCC appears to contain the information required by NSCC but does not appear to contain the information required by the designated insurance carrier, NSCC will nevertheless transmit the application information to the designated insurance carrier but will not settle any initial premium payments submitted with such information. However, if the information contains four or more errors, NSCC will reject all of the submitted information and will not settle any initial premium payments submitted with such information.

NSCC believes the proposed rule change is consistent with Section 17A of the Act because phase two of APS will facilitate the prompt and accurate clearance and settlement of securities transactions and will in general protect investors and the public interest.

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

NSCC does not believe that the proposed rule change will impact or impose a burden on competition.

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

No written comments 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

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 NSCC 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the

² The Commission has modified parts of these statements.

³ Securities Exchange Act Release No. 39096 (September 19, 1997), 62 FR 50416 [order approving the establishment of APS and the implementation of phase I of APS].

⁴ *Id.*

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 in Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to the File No. SR-NSCC-98-07 and should be submitted by November 9, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98-27909 Filed 10-16-98; 8:45 am]

BILLING CODE 8010-01-M

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of (1) promulgation of temporary, "emergency" guideline amendment increasing the penalties for (A) fraud offenses involving sophisticated means; and (B) offenses involving a large number of vulnerable victims; and (2) final action regarding amendments to sentencing guidelines and policy statements effective November 1, 1998.

SUMMARY: The United States Sentencing Commission hereby gives notice of the following actions: (1) Pursuant to the Telemarketing Fraud Prevention Act of 1998, Pub. L. 105-184, the Commission has promulgated temporary, emergency amendments to §§ 2F1.1 (Fraud and Deceit) and 3A1.1 (Hate Crime Motivation and Vulnerable Victim) and accompanying commentary; (2) pursuant to its authority under 28 U.S.C. 994(a) and (p), the Commission has promulgated amendments to commentary and the statutory index.

SUPPLEMENTARY INFORMATION: The Telemarketing Fraud Prevention Act of 1998 directed the Commission generally to provide for substantially increased penalties for persons convicted of an

offense described in section 2326 of title 18, United States Code, in connection with the conduct of telemarketing fraud. The temporary, emergency amendments set forth in this notice implement this general directive in a broader form and also respond to a number of specific requirements in the Act.

DATES: The Commission has specified an effective date of November 1, 1998 for the emergency amendments increasing the penalties for fraud offenses involving sophisticated means and offenses involving a large number of vulnerable victims, and the amendments to the commentary and the statutory index.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, Telephone: (202) 273-4590.

Authority: 28 U.S.C. 994(a) and (p).
Richard P. Conaboy,
Chairman.

1. Amendment: Section 2F1.1(b) is amended by striking subdivision (3) and all that follows through the end of the subsection and inserting the following:

"(3) If the offense was committed through mass-marketing, increase by 2 levels.

(4) If the offense involved (A) a misrepresentation that the defendant was acting on behalf of a charitable, educational, religious or political organization, or a government agency; or (B) violation of any judicial or administrative order, injunction, decree, or process not addressed elsewhere in the guidelines, increase by 2 levels. If the resulting offense level is less than level 10, increase to level 10.

(5) If (A) the defendant relocated, or participated in relocating, a fraudulent scheme to another jurisdiction to evade law enforcement or regulatory officials; (B) a substantial part of a fraudulent scheme was committed from outside the United States; or (C) the offense otherwise involved sophisticated means, increase by 2 levels. If the resulting offense level is less than level 12, increase to level 12.

(6) If the offense involved (A) the conscious or reckless risk of serious bodily injury; or (B) possession of a dangerous weapon (including a firearm) in connection with the offense, increase by 2 levels. If the resulting offense level is less than level 13, increase to level 13.

(7) If the offense—

(A) Substantially jeopardized the safety and soundness of a financial institution; or

(B) Affected a financial institution and the defendant derived more than \$1,000,000 in gross receipts from the offense, increase by 4 levels. If the

resulting offense level is less than level 24, increase to level 24".

The Commentary to § 2F1.1 captioned "Application Notes" is amended by striking Application Note 14 and all that follows through the end of the Application Notes and inserting the following:

"15. For purposes of subsection (b)(5)(B), 'United States' means each of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa.

For purposes of subsection (b)(5)(C), 'sophisticated means' means especially complex or especially intricate offense conduct pertaining to the execution or concealment of an offense. For example, in a telemarketing scheme, locating the main office of the scheme in one jurisdiction but locating soliciting operations in another jurisdiction would ordinarily indicate sophisticated means. Conduct such as hiding assets or transactions, or both, through the use of fictitious entities, corporate shells, or offshore bank accounts also ordinarily would indicate sophisticated means.

The enhancement for sophisticated means under subsection (b)(5)(C) requires conduct that is significantly more complex or intricate than the conduct that may form the basis for an enhancement for more than minimal planning under subsection (b)(2)(A).

If the conduct that forms the basis for an enhancement under subsection (b)(5) is the only conduct that forms the basis for an adjustment under § 3C1.1 (Obstruction of Justice), do not apply an adjustment under § 3C1.1.

16. 'Financial institution,' as used in this guideline, is defined to include any institution described in 18 U.S.C. 20, 656, 657, 1005-1007, and 1014; any state or foreign bank, trust company, credit union, insurance company, investment company, mutual fund, savings (building and loan) association, union or employee pension fund; any health, medical or hospital insurance association; brokers and dealers registered, or required to be registered, with the Securities and Exchange Commission; futures commodity merchants and commodity pool operators registered, or required to be registered, with the Commodity Futures Trading Commission; and any similar entity, whether or not insured by the federal government. 'Union or employee pension fund' and 'any health, medical, or hospital insurance association,' as used above, primarily include large pension funds that serve many individuals (e.g., pension funds of large national and international

⁵ 17 CFR 200.30-3(a)(12).