

of an ELDS is similar to the risk involved in the purchase or sale of traditional common stock. Nonetheless, in considering the Amex's ELNs<sup>14</sup> proposal<sup>15</sup> and the NYSE's ELDS proposal,<sup>16</sup> the Commission had several specific concerns with this type of product (*i.e.*, (1) investor protection concerns, (2) dependence on the credit of the issuer of the instrument, (3) systemic concerns regarding position exposure of issuers with partially hedged positions or dynamically hedged positions, and (4) the impact on the market for the underlying linked security).<sup>17</sup> The Commission concluded, however, that the Amex and NYSE proposals adequately addressed each of these issues such that the Commission's regulatory concerns were adequately minimized.<sup>18</sup> Similarly, in this proposal, the CHX has proposed safeguards that address these concerns which the Commission finds to be equivalent to those approved for the trading of ELNs at the Amex and ELDS at the NYSE.

The Commission notes that the CHX proposal also provides for unlisted trading privileges for ELDS listed on other exchanges. The Commission believes that unlisted trading privileges for ELDS is also consistent with the Act because it removes impediments to and perfects the mechanism of a free and open market. Unlisted trading privileges allow for the trading of additional products at the CHX which are subject to listing standards that are equivalent to the CHX listing standards for ELDS. Accordingly, for the reasons stated herein, as well as in the Commission's ELNs approval for the Amex and the ELDS approval for the NYSE, the Commission finds that the CHX standards for listing and trading of ELDS are consistent with the Act and the listing and trading of ELDS is in the public interest.

Finally, the Exchange has requested, and the Commission agrees that, accelerated approval is appropriate in this instance. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice thereof in the **Federal Register**. The Commission finds that the proposal closely conforms to the proposals already approved by the Commission

with respect to the listing and trading of ELNs on the Amex<sup>19</sup> and ELDS on the NYSE.<sup>20</sup> Accordingly, the CHX proposal presents no new regulatory issues. Moreover, both the NYSE and Amex proposals were subject to the full 21-day period, yet no comments were received by the Commission. Therefore, the Commission believes it is consistent with Sections 6(b)(5)<sup>21</sup> and 19(b)(2)<sup>22</sup> of the Act to approve the proposed rule change on an accelerated basis.

*It is therefore ordered*, pursuant to section 19(b)(2) of the Act,<sup>23</sup> that the proposed rule change (SR-CSE-98-02) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>24</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40740; File No. SR-NSCC-98-10]

### Self-Regulatory Organizations; National Securities Clearing Corporation; Order Granting Approval of a Proposed Rule Change Authorizing the Modification of NSCC's Collateral Management Service

December 3, 1998.

On July 22, 1998, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-NSCC-98-10) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> Notice of the proposal was published in the **Federal Register** on October 16, 1998.<sup>2</sup> For the reasons discussed below, the Commission is approving the proposed rule change.

#### I. Description

NSCC's Collateral Management Service ("CMS") provides automated access to information on participants' clearing fund, margin, and other deposits at NSCC and other

participating clearing entities.<sup>3</sup> The purpose of this rule change is to add an interactive messaging feature to CMS. Specifically, NSCC is modifying CMS to: (i) enable participating clearing entities and participants to send and receive messages regarding collateral on an automated basis through CMS; (ii) enable participants that elect to participate in CMS to request a withdrawal of excess collateral on a daily basis, including an intraday withdrawal of excess cash collateral; and (iii) address the movement of collateral based on CMS messages. The modifications primarily affect Rule 53 (Collateral Management Service) of NSCC's Rules and Procedures.

NSCC intends to implement the modifications to CMS upon approval of the proposed rule change. Other participating clearing entities will be able to make the CMS modifications relating to clearing fund and margin deposits available on a phased-in basis at a time determined by each clearing entity.<sup>4</sup>

#### CMS Message Processing

NSCC is modifying NSCC Rule 53 to enable NSCC, participating clearing entities, and participating participants to send and receive interactive messages regarding their respective CMS information ("CMS messages"). CMS messages include the following: (i) a request by NSCC or a participating clearing entity to a participant for additional collateral; (ii) a request by a participant to NSCC or to a participating clearing entity to return excess collateral; (iii) a request by a participant to NSCC or to a participating clearing entity to use excess cash collateral to satisfy a settlement deficit at the entity where there is excess cash collateral; (iv) a request by a participant to NSCC or to a participating clearing entity to substitute collateral; and (v) a request by a participant to NSCC or to a participating clearing entity to use excess cash collateral to satisfy a clearing fund or margin deficit at an entity other than where there is excess cash collateral.

NSCC, participating clearing entities, and participating participants will send and receive CMS messages on an automated basis by using CMS message screens. Generally, the CMS message screens will contain fields to identify

<sup>14</sup> As noted earlier, ELNs, Equity Linked Term Notes are the same product, with the same terms and characteristics, as defined herein for ELDS.

<sup>15</sup> Exchange Act Release No. 32343 (May 20, 1993).

<sup>16</sup> Exchange Act Release No. 33468 (January 13, 1994).

<sup>17</sup> Release Nos. 34-32343 and 34-33468.

<sup>18</sup> *Id.*

<sup>19</sup> Release No. 34-32343.

<sup>20</sup> Release No. 34-33468.

<sup>21</sup> 15 U.S.C. 78f(b)(5).

<sup>22</sup> 15 U.S.C. 78s(b)(2).

<sup>23</sup> 15 U.S.C. 78s(b)(2).

<sup>24</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. 40536 (October 8, 1998) 63 FR 55664.

<sup>3</sup> For a detailed description of CMS, refer to Securities Exchange Act Release No. 36091 (August 10, 1995) 60 FR 42931 [File No. SR-NSCC-95-06].

<sup>4</sup> Each participating clearing entity will need to review its rules and to file any necessary proposed rule changes under Section 19(b) before making available to its participants the ability to move and withdraw collateral.

the requesting entity, the entity or entities receiving the CMS message, the type of request, the request amount, the type of collateral, and the date of the request. CMS will transmit the request to the entity or entities identified in the request. All requests by a participant to NSCC and to participating clearing entities will require approval of the clearing entity.

NSCC is adding Procedure XVI to its rules and procedures to set forth the procedures for processing each of the five basic types of CMS messages. First, Procedure XVI provides that NSCC and participating clearing entities may submit a request for additional collateral to a participant through CMS.<sup>5</sup> The request will be transmitted to the participant identified in the request. Second, Procedure XVI provides that a participant may submit a request for the return of excess collateral to NSCC or to a participating clearing entity through CMS.<sup>6</sup> The requesting participant will receive a message from the clearing entity indicating the approval or rejection of the request and in the case of a rejection the reason(s) for the rejection. Third, Procedure XVI provides that a participant may submit a request to NSCC or to a participating clearing entity to use excess cash collateral to satisfy a settlement deficit at the clearing entity where there is excess cash collateral.<sup>7</sup> The request will be transmitted to the clearing entity identified in the request for approval or rejection. The requesting participant will receive a message indicating the approval or rejection of the request and in the case of a rejection the reason(s) for the rejection.

Fourth, Procedure XVI provides that a participant may submit a request to NSCC or to a participating clearing entity to substitute collateral.<sup>8</sup> The

request will be transmitted to the clearing entity identified in the request for approval or rejection. The requesting participant will receive a message indicating the approval or rejection of the request and in the case of a rejection the reason(s) for the rejection.

Fifth, Procedure XVI provides that a participant may submit a request to use excess cash collateral at one participating clearing entity or NSCC to satisfy a clearing fund or margin deficit at another participating clearing entity or NSCC.<sup>9</sup> The request will be transmitted to both clearing entities identified in the request for approval or rejection. The requesting participant will receive a message from each clearing entity indicating the approval or rejection of the request and in the case of a rejection the reason(s) for the rejection.

Procedure XVI also provides that requests must be submitted by such times on each processing day as may be established by NSCC and participating clearing entities. A request by a participant to NSCC or to a participating clearing entity that is not fully approved on the day that it is submitted will not be carried forward to the next processing day. However, CMS provides for "today for tomorrow" requests that will pend and will be incorporated into the next day's processing if so designated.

#### *Withdrawal of Excess Collateral on a Daily Basis*

The rule change also modifies Rule 53 and makes conforming changes to other rules and procedures to allow participating participants to request a withdrawal of excess collateral on a daily basis, including an intraday withdrawal of excess cash collateral. This modification is an exception to NSCC's general rule that permits a participant to request the return of excess collateral no more frequently than monthly and is also an exception to the general rule that permits certain participants on surveillance status to request the return of excess collateral no more frequently than quarterly. Although the rule change allows participants to make daily requests for return of excess collateral, NSCC still has discretion to deny such requests.

by the participant, the date of the request, and such other information as may be required or permitted.

<sup>9</sup> The request must include the identity of the requesting participant, the identity of the clearing entity from which the excess cash collateral is to be sent, the identity of the clearing entity to which the excess cash collateral is to be sent, the total amount of the request, the date of the request, and such other information as may be required or permitted.

#### *Movement of Collateral Based on CMS Messages*

The rule change modifies Rule 53 to address the movement of collateral based on CMS messages. The actual movement of collateral based on a CMS message and will be made between the appropriate clearing entity and the participant pursuant to the rules and procedures of the appropriate clearing entity. However, under the rule change the movement of collateral based on a participant's request to use excess cash collateral at one clearing entity to satisfy a clearing fund or margin deficit at another clearing entity will be made directly between the clearing entities daily on a bilateral net basis or as otherwise may be determined by the clearing entities.

Currently, an agreement authorizing use of data for CMS ("CMS Agreement") addresses NSCC's authorization from participating clearing entities to collect and provide clearing fund and margin requirement and deposit information. Under an amendment to the CMS Agreement, NSCC and participating clearing entities will agree to make payments in accordance with their respective rules and procedures based on approved participant requests to use excess cash collateral at one clearing entity to satisfy a clearing fund or margin deficit at another clearing entity daily on a bilateral net basis or as otherwise may be determined by the clearing entities.<sup>10</sup> From the perspective of a participant, excess cash collateral will be treated as moved at the time both clearing entities approve the participant's request or at such other time as the clearing entities may mutually agree.

The movement of excess cash collateral from NSCC to an NSCC participant based on a CMS message will be included in NSCC's money settlement process unless the participant requests an intraday wire transfer of funds. The rule change also makes a technical modification to Section 6 of Rule 53 to add references to CMS messages.

## **II. Discussion**

Section 17A(b)(3)(F)<sup>11</sup> of the Act requires that the rules of a clearing agency be designed to foster cooperation and coordination with persons engaged in the clearance and settlement of

<sup>10</sup> Participating clearing entities other than NSCC will be required to execute the amendment to the CMS Agreement when they begin to phase in the CMS modifications. Participating clearing entities may also need to file proposed rule changes in connection with executing the amendment to the CMS Agreement.

<sup>11</sup> 15 U.S.C. 78q-1(b) (3) (F).

<sup>5</sup> The request must include the identity of the requesting clearing entity, the identity of the participant, the total amount of the request, the type of collateral (*i.e.*, cash, securities, and/or letters of credit), the date of the request, and such other information as may be required or permitted.

<sup>6</sup> The request must include the identity of the requesting participant, the identity of the appropriate clearing entity, the total amount of the request, the type of collateral (*i.e.*, cash, securities, and/or letters of credit), the date of the request, and such other information as may be required or permitted.

<sup>7</sup> The request must include the identity of the requesting participant, the identity of the appropriate clearing entity, the total amount of the request, the date of the request, and such other information as may be required or permitted.

<sup>8</sup> The request must include the identity of the requesting participant, the identity of the appropriate clearing entity, the total amount and type of the collateral (*i.e.*, cash, securities, and/or letters of credit) to be returned to the participant, the total amount and type of collateral (*i.e.*, cash, securities, and/or letters of credit) to be substituted

securities transactions. The Commission believes the NSCC's new interactive messaging feature should increase the efficiency of collateral movements in and among clearing entities by establishing a standardized and automated system to request the movement or withdrawal of collateral. Further, the CMS modifications will give NSCC and participants information regarding participants' requests for movement or withdrawal of collateral which should help participating clearing entities to better monitor their participants' collateral positions. Therefore, the Commission believes that the change is consistent with NSCC's obligations under Section 17A(b)(3)(F).

### 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 with 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-98-10) 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. 98-32668 Filed 12-8-98; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40731; File No. SR-NYSE-98-39]

### Self-Regulatory Organization; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc., To Increase the Administration Fee Charged for the Supervisory Analyst Examination (Series 16)

December 1, 1998.

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 November 13, 1998, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") 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 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 NYSE proposes to increase the fee for the Supervisory Analyst Examination (Series 16) from \$60 to \$200 per administration effective December 1, 1998.

#### 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

Exchange Rule 472(b) ("Communications With The Public") requires that research reports be prepared or approved by a supervisory analyst acceptable to the Exchange under the provisions of Rule 344 ("Supervisory Analysts"). The Supervisory Analyst Examination ("Series 16") is the qualification examination that a person must pass before he or she can work as a Supervisory Analyst for a member or member organization. The Exam previously was administered in paper and pencil format and the fee charged has been \$60 per candidate. Recently, the Exchange began administration of this examination in electronic format at Sylvan Test Centers. These test centers also administer other industry examinations.

The Exchange proposes to increase the administration fee for the Series 16 Examination to \$200 per exam administration effective December 1, 1998. The increased fee is necessary to offset expenses incurred in developing, updating and administering the exam. Additionally, the fee will be consistent with the fees charged for other exams.

##### 2. Statutory Basis

The proposed rule change is consistent with the requirement under Section 6(b)(4) of the Act<sup>3</sup> that an Exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities.

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

The Exchange believes that the proposal does not 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

Comments were neither solicited nor received.

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

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act<sup>4</sup> and subparagraph (e)(2) of Rule 19b-4 thereunder.<sup>5</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.<sup>6</sup>

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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

<sup>3</sup> 15 U.S.C. 78f(b)(4).

<sup>4</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>5</sup> 17 CFR 240.19b-4(e)(2).

<sup>6</sup> In reviewing this proposal, the Commission has considered its potential impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>12</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.