

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

NSCC does not believe that the proposed rule change will have an impact on 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 relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any other 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 the 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 20549-0609. 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 will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR-NSCC-00-09 and should be submitted by March 30, 2001.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>4</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## **SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-44031; File No. SR-NSCC-00-10]

### **Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving a Proposed Rule Change Relating to Processing Certain Securities Undergoing Reorganization**

March 2, 2001.

On October 10, 2000, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-NSCC-00-10) 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 December 18, 2000.<sup>2</sup> No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

#### **I. Description**

The proposed rule change modifies NSCC's Rules and Procedures to permit securities that are subject to certain voluntary corporate action which previously would have caused them to be exited from NSCC's continuous net settlement ("CNS") system to continue to be processed in CNS.<sup>3</sup> NSCC has enhanced the CNS system to enable it to process securities with reorganization events that have a wider and more varied range of features. The proposed rule change provides that when NSCC determines that it has the operational capability to continue to process such an issue, the issue will continue to be CNS eligible, and NSCC will establish procedures necessary for NSCC to accommodate the issue in CNS. NSCC will issue an Important Notice to its members detailing how the security will be processed.

NSCC's Rules and Procedures permit NSCC to continue to process certain

securities undergoing corporate reorganizations and specify how NSCC shall handle those issues. For example, currently NSCC's Procedure VII provides for the processing in CNS of securities subject to tender offers with protect periods of three or more days. Securities subject to tender offers with protect periods of less than three days cannot currently be processed in CNS, and NSCC would normally exit such securities from the CNS system. In that case, NSCC would issue receive/deliver instructions to participants with long or short positions in the subject security. The proposed rule change allows securities subject to tender offers with no protect periods or protect periods of less than three days to be processed in CNS.

Another example, would be issues subject to multiple tender offers. Currently, NSCC's Rules and Procedures provide for the establishment of up to two CNS reorganization subaccounts for issues subject to two tender offers. Under NSCC's proposed rule change, it could, provided it has the operation capability to do so, establish multiple CNS subaccount for issues subject to multiple tender offers.

In addition, in order to eliminate the possibility of error which arises from manual processing, NSCC has determined not to continue providing certain features which were processed on a manual basis. For example, the rule no longer permits new input on the list day of the protect period.

#### **II. Discussion**

The Commission finds that the proposed rule change is consistent with the requirement of the Act and the rules and regulations thereunder and particularly with the requirements of section 17A(b)(3)(F).<sup>4</sup> Section 17A(b)(3)(F) requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes that NSCC's rule change meets this standard because the proposed rule change allows additional corporate actions to be processed in and receive the benefits of NSCC's CNS system. Thus, the proposed rule change facilitates the prompt and accurate clearance and settlement of such securities transactions.

#### **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(b)(3)(F) of

<sup>4</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. 43699 (December 11, 2000), 65 FR 79144.

<sup>3</sup> The proposed rule change also modified NSCC's Rules and Procedures to refer to reorganization events as voluntary and mandatory instead of as voluntary and involuntary.

<sup>4</sup> 15 U.S.C. 78q-1(b)(3)(F).

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-00-10) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-44033; File No. SR-NYSE-00-30]

### Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. Amending NYSE Rule 104

March 2, 2001.

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 June 29, 2000, 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. On February 21, 2000, the Exchange filed Amendment No. 1 ("Amendment No. 1") to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the

amended 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 consists of an amendment to NYSE Rule 104 to permit specialists to make certain destabilizing transactions for his or her own account without Floor Official approval to bring the price of a listed foreign security into parity with the price of the foreign ordinary security.

The text of the proposed rule change is available at the NYSE and at the Commission.

#### 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 NYSE 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

The Exchange is proposing to amend NYSE Rule 104 to facilitate specialist market making in foreign securities traded on the Exchange. Currently, NYSE Rule 104 requires specialists to obtain Floor Official approval when purchasing on a direct plus tick or selling on a direct minus tick, or when purchasing on a zero plus tick more than 50% of the stock offered. These transactions are seen as destabilizing, and may be effected by the specialist only with Floor Official approval. The Exchange is proposing to amend NYSE Rule 104 to provide that, without first obtaining Floor Official approval, specialists may engage in these destabilizing transactions, under certain circumstances to be discussed below, to bring a listed foreign security into parity with the price of the foreign ordinary security.<sup>4</sup>

With respect to a listed foreign security, the price of the transaction to

bring the security into parity (a) must be based on the last sale price in the home country market, if that market is open, or (b) if the home country market is not open, the parity price must be between the then current bid and offer in the London (UK) market, *i.e.*, the London Stock Exchange, or (c) must be based at any time on changes in the home country-U.S. dollar exchange rate.<sup>5</sup> The transactions described above to bring a listed foreign security into parity with the price of the foreign ordinary security in any other market would continue to require Floor Official approval.

NYSE Rule 104.10(7), as amended, also clarifies specialists' responsibilities with respect to consecutive direct tick destabilizing parity transactions in foreign securities.<sup>6</sup> The Exchange proposes that a specialist must not effect consecutive direct tick destabilizing trades unless these transactions are effected to bring a listed foreign security into parity with the price of the foreign ordinary security and a Floor Official has approved the transaction. For example, a specialist may want to trade on consecutive direct tick destabilizing transactions for his or her own account to bring the security into parity when a stock is not actively traded on the Exchange, but is active in its home country. The NYSE believes that the specialist's transactions in this situation could benefit the market and public investors by maintaining parity if there is an absence of public orders. Such consecutive direct tick destabilizing transactions would require Floor Official approval. Floor Officials would look at all circumstances surrounding the request.

The main change being effected by the proposal is that non-consecutive destabilizing transactions as described above, which are effected to achieve parity, would not require Floor Official approval as currently mandated by NYSE Rule 104. The Exchange represents that this proposal is analogous to the provisions currently in NYSE Rule 104 with respect to transactions effected to bring the price of an investment company unit into parity with the value of the index on which it is based or with the net asset

<sup>5</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>3</sup> In Amendment No. 1, the Exchange proposed to: (1) Revise the proposed rule text to clarify that the relief afforded from obtaining Floor Official approval for destabilizing transactions to bring a listed foreign security into parity with the price of a foreign ordinary security is available only where the Exchange is not the principal market for the security; (2) add language to the proposed rule text that affirmatively states that specialists must not effect consecutive direct tick destabilizing trades unless the transaction is effected to bring a foreign listed security into parity with the price of a foreign ordinary security and a Floor Official has approved the transaction; (3) clarify that it will consider the home country market as the principal market for a foreign security, unless a significant volume of the shares traded in that security take place otherwise than in that market; (4) require that specialists keep a record of the source of exchange rate information they utilize; and (5) issue a memorandum to all specialists and Floor Officials to explain the relief afforded by the proposed rule change and to provide specific reference to the interaction between specialists destabilizing parity transactions and certain Exchange rules, upon receiving Commission approval of the proposed rule change.

<sup>4</sup> The proposed rule defines a listed foreign security as a security traded on the Exchange, which is a foreign ordinary security, or a depositary receipt that represents a foreign company's publicly traded security.

<sup>5</sup> Currency exchange rate information is displayed on the Floor of the Exchange utilizing information from Reuters. Specialists may also utilize other sources of vendor-supplied exchange rate information. Specialists must keep a record of the source of the exchange rate information they utilize. See Amendment No. 1, *supra* note 3.

<sup>6</sup> See Amendment No. 1, *supra* note 3.