

under Section 3(a)(4) of the Act.<sup>1</sup> Section 3(a)(4) provides that the Commission shall exempt, "unless and except insofar as it finds the exemption detrimental to the public interest or the interest of investors or consumers," a holding company if:

such holding company is temporarily a holding company solely by reason of the acquisition of securities for purposes of liquidation or distribution in connection with a bona fide debt previously contracted or in connection with a bona fide arrangement for the underwriting or distribution of securities \* \* \*

Section 3(c) of the Act provides that:

Within a reasonable time after the receipt of an application for exemption under subsection (a) or (b), the Commission shall enter an order granting, or, after notice and opportunity for hearing, denying or otherwise disposing of such application \* \* \*

We cannot, from the face of the Application, conclude that Enron meets the statutory criteria for an exemption pursuant to section 3(a)(4) of the Act. Therefore, we have determined, in accordance with sections 3(c) and 19 of the Act, to conduct a hearing on Enron's Application.<sup>2</sup> Because ownership and control of Portland General has not yet been transferred to the other applicants, there is no basis for taking action on the applications of SFC and PGE Trust. We therefore do not consider these two requests.

The hearing will be conducted on the basis of written submissions to be filed on or before February 2, 2004.<sup>3</sup> We currently believe, given the issues raised in the Application, that a hearing on the basis of written submissions will be sufficient. However, if any person believes that oral testimony or oral argument is necessary, he may request that the Commission consider ordering such testimony or oral argument. Such a request should be filed by February 2, 2004, and should specify why the person making the request believes such testimony or argument is necessary and what the person making the request

<sup>1</sup> We take no position as to whether the Application with respect to any of the Applicants was filed in good faith as required under Section 3(c) in order to exempt the applicant from any obligation, duty, or liability imposed by the Act upon the applicant until the Commission has acted on such application.

<sup>2</sup> Although the Applicants did not request a hearing, they have reserved their right to do so.

<sup>3</sup> No briefs in addition to those specified in this Notice and Order may be filed without leave of the Commission. Attention is called to Rules 150-153, with respect to form and service. Briefs shall not exceed 50 pages, exclusive of pages containing the table of contents, table of authorities, and any addendum, except with leave of the Commission. Requests for extensions of time to file briefs are disfavored.

expects to accomplish thorough such testimony or argument.

Accordingly, *it is hereby ordered* that a hearing shall be conducted, pursuant to Sections 3(c) and 19 of the Act (and in accordance with the Commission's Rules of Practice except as otherwise provided), on February 2, 2004. Enron and the Division of Investment Management shall file with the Secretary of the Commission, on or before February 2, 2004, a written submission that identifies specifically the issues of fact or law in dispute including legal arguments supporting their position, and shall serve simultaneously a copy of such submission on the other participant. A person who files a written submission will receive a copy of any other notice or order issued in this matter; and

*It is further ordered* that Enron and the Division of Investment Management shall be parties to the proceeding and that Enron, as the proponent of the exemptive order it seeks, shall, pursuant to 5 U.S.C. 556(d), bear the burden of proving that it is entitled to such exemptive order; and

*It is further ordered* that any person who seeks to intervene as a party pursuant to Rule of Practice 210(b)<sup>4</sup> shall file a motion to intervene with the Secretary of the Commission no later than February 2, 2004, and any person who seeks to participate on a limited basis pursuant to Rule of Practice 210(c)<sup>5</sup> shall file a motion for leave to participate with the Secretary of the Commission no later than February 2, 2004. Any person who seeks to intervene as a party or to participate on a limited basis also shall file with the Secretary of the Commission no later than February 2, 2004, a written submission that identifies specifically the issues of fact or law in dispute including any legal arguments supporting that person's position and identifies the person's interest in the Application, and shall serve all participants with a copy of any document the person files with the Commission; and

*It is further ordered* that the Secretary of the Commission shall mail copies of this Notice and Order by certified mail to Enron at the address noted above and shall serve a copy on the Division of Investment Management; that notice to all other persons shall be given by publication of this Notice and Order in the **Federal Register**; and this Notice and Order and any subsequent orders granting or denying or otherwise disposing of the Application shall be

<sup>4</sup> 17 CFR 201.210(b).

<sup>5</sup> 17 CFR 201.210(c).

posted on the Commission's Web site at [www.sec.gov](http://www.sec.gov) and published in the SEC Docket.

By the Commission,  
**Margaret H. McFarland,**  
*Deputy Secretary.*  
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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 49038; January 8, 2004]

### Securities Exchange Act of 1934; Order Granting Temporary Exemption for Security Futures Products From the Definition of Penny Stock

The Commodity Futures Modernization Act of 2000 ("CFMA") permits the trading of security futures, *i.e.*, futures contracts on individual securities and on narrow-based security indexes ("security futures").<sup>1</sup> Under the CFMA, security futures are regulated both as "securities" under the federal securities laws,<sup>2</sup> and as futures contracts for the purposes of the Commodity Exchange Act ("CEA").<sup>3</sup> Accordingly, security futures products potentially fall within the statutory definition of penny stock.<sup>4</sup> Thus, absent an exemption, security futures products could be subject to the Commission's regulatory scheme for penny stocks.<sup>5</sup>

We are proposing to amend the definition of penny stock in Exchange Act Rule 3a51-1 to exclude security futures listed on a national securities exchange or an automated quotation system sponsored by a registered national securities association.<sup>6</sup> This

<sup>1</sup> Pub. L. 106-554, 114 Stat. 2763 (2000). Under Section 3(a)(55)(A) of the Securities Exchange Act of 1934 ("Exchange Act"), the term "security future" is defined as a contract of sale for future delivery of a single security or of a narrow-based security index. 15 U.S.C. 78c(a)(55)(A). Under Exchange Act Section 3(a)(56), the term "security futures product" is defined as a security future or an option on a security future. 15 U.S.C. 78c(a)(56).

<sup>2</sup> See, *e.g.*, Exchange Act Section 3(a)(10), 15 U.S.C. 78c(a)(10).

<sup>3</sup> The term "security future" is defined in CEA Section 1a(31) [7 U.S.C. 1a(31)] as a contract of sale for future delivery of a single security or of a narrow-based security index. Under CEA Section 1a(33) (7 U.S.C. 1a(33)), the term "security futures product" is defined as a security future or an option on a security future.

<sup>4</sup> 15 U.S.C. 78c(a)(51). This definition is supplemented by Exchange Act Rule 3a51-1, 17 CFR 240.3a51-1, which further defines the term "penny stock."

<sup>5</sup> Rules 15g-1 through 15g-9 under the Exchange Act (collectively known as the "penny stock rules") 17 CFR 240.15g-2 through 15g-9.

<sup>6</sup> See Exchange Act Rel. No. 49037 (January 8, 2004). Section 6(h)(1) of the Exchange Act makes it unlawful for any person to effect transactions in security futures products that are not listed on a

would be consistent with the treatment of exchange-traded options under the penny stock rules.<sup>7</sup> Both exchange-traded options and security futures products are subject to special disclosure requirements.<sup>8</sup> Subjecting security futures to the additional disclosure regime of the penny stock rules, therefore, would likely be duplicative and unnecessarily burdensome.

Security futures commenced trading in the United States on November 8, 2002 on the Nasdaq-Liffe and OneChicago markets.<sup>9</sup> Therefore, the Commission, through this order, is providing an exemption from the penny stock rules for security futures such time as the Commission takes any further action on the proposed amendment to Rule 3a51-1 outlined above. This exemption will allow the Commission to receive and consider comments while, at the same time, temporarily excluding security futures products from the penny stock rules.

Because security futures are subject to an alternative regulatory scheme, and because the CFMA directs the Commission to issue such rules, regulations, or orders as are necessary to avoid duplicative or conflicting regulations for firms that are "fully registered" with both the Commodity Futures Trading Commission and the Commission,<sup>10</sup> the Commission finds that it is appropriate in the public interest and consistent with the protection of investors to provide this temporary exemptive relief.

Accordingly, pursuant to Section 36(a)(1) of the Exchange Act,<sup>11</sup>

*It is hereby ordered that security futures products are exempted from the definition of penny stock set forth in Exchange Act Section 3(a)(51)(A) and*

national securities exchange or a national securities association registered pursuant to section 15A(a), 15 U.S.C. 78f(h)(1).

<sup>7</sup> In particular, the term "penny stock" currently does not include any put or call option issued by the Options Clearing Corporation ("OCC"). See 17 CFR 240.3a51-1(c).

<sup>8</sup> Exchange Act Rel. No. 30608 (April 20, 1992) at n. 39, 57 FR 18004 (April 28, 1992) ("In addition, because put and call options issued by the OCC are already subject to special disclosure requirements, they are separately excluded from the definition of penny stock in paragraph (c) of Rule 3a51-1."). See also 17 CFR 240.9b-1; CBOE Rules 9.1-9.23; NASD Rule 2860 (16).

<sup>9</sup> Peter A. McKay, *Single Stocks Futures Arrive in the U.S. With Room to Grow*, Wall Street Journal, Nov. 11, 2002, at B6.

<sup>10</sup> See Exchange Act Section 15(c)(3)(B), 15 U.S.C. 78o(c)(3)(B) (directing the Commission to avoid duplicative or conflicting rules relating to the treatment of customer funds, securities, or property, maintenance of books and records, financial reporting, or other financial responsibility rules, involving security futures).

<sup>11</sup> 15 U.S.C. 78mm(a)(1).

Rule 3a51-1 until such time as the Commission takes any further action on the proposed amendment to Rule 3a51-1.

By the Commission.

**J. Lynn Taylor,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49051; File No. SR-NSCC-2003-15]

### Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change to Implement Real-Time Trade Matching for Fixed Income Securities

January 12, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on June 27, 2003, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change 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 parties.

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

NSCC is seeking to implement a real-time trade matching system ("RTTM") for certain NSCC-eligible corporate bonds, municipal bonds, and unit investment trusts ("NSCC debt securities").<sup>2</sup>

#### 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 these statements.<sup>3</sup>

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

RTTM was implemented in the fourth quarter of 2000 by the former Government Securities Clearing Corporation ("GSCC"),<sup>4</sup> an NSCC affiliate, for the processing of government securities transactions.<sup>5</sup> It was designed with a vision to use the platform for other fixed income securities. Accordingly, it was implemented in 2002 for mortgage-backed securities transactions processed by the former MBSCC.<sup>6</sup> The purpose of the proposed rule change is to implement RTTM for NSCC debt securities. RTTM will eventually replace NSCC's current Fixed Income Transactions System ("FITS").<sup>7</sup>

The two areas of NSCC debt securities processing rules that require changes to implement RTTM are (1) inbound submissions to NSCC and (2) NSCC's reporting of information related to such submissions to participants. Specifically, interactive messages and the RTTM Web User Interface ("RTTM Web")<sup>8</sup> will be added as ways in which participants can submit trade data and subsequent related trade processing instructions.<sup>9</sup> With respect to output issued by NSCC, initially upon implementation, end-of-day reports will continue to be produced by FITS

<sup>3</sup> The Commission has modified the text of the summaries prepared by NSCC.

<sup>4</sup> On January 1, 2003, MBS Clearing Corporation ("MBSCC") was merged into GSCC and GSCC was renamed the Fixed Income Clearing Corporation ("FICC"). The functions previously performed by GSCC are now performed by the Government Securities Division ("GSD") of FICC, and the functions previously performed by MBSCC are now performed by the Mortgage-Backed Securities Division ("MBSD") of FICC. Securities Exchange Act Release No. 47015 (December 17, 2002), 67 FR 78531 (File Nos. SR-GSCC-2002-09 and SR-MBSCC-2002-01).

<sup>5</sup> Securities Exchange Act Release No. 44946 (October 17, 2001), 66 FR 53816 (File No. SR-GSCC-2001-01).

<sup>6</sup> Securities Exchange Act Release No. 45563 (March 14, 2002), 67 FR 13389 (File No. SR-MBSCC-2001-02).

<sup>7</sup> In March 2003, the Commission approved certain modifications to FITS in order to prepare NSCC participants for the new RTTM functionality. Securities Exchange Act Release No. 47494 (March 13, 2003), 68 FR 13975 (File No. SR-NSCC-2003-10).

<sup>8</sup> The RTTM Web will replace NSCC's PC Web application for NSCC fixed income securities.

RTTM will be implemented in phases in 2004. Participants will be notified of specific implementation dates by Important Notice. Conversation with Nikki Poulos, Vice President and Associate General Counsel, FICC (January 9, 2004).

<sup>9</sup> Initially, RTTM will support the current batch method of data input.

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

<sup>2</sup> The proposed rule change does not apply to debt securities transactions that are submitted to NSCC via its correspondent clearing service, by regional exchanges/marketplaces, or through qualified securities depositories as defined in NSCC's rules because such transactions will not be processed by RTTM.