

of the order's entry into the system. A buy order will pay the prevailing market quote for an offer and a sell order will sell at the prevailing market quote for the bid. A market maker who has signed on as a participant in RAES will be designated as a contra-broker on the trade; trades are assigned to participating market makers on a rotating basis.

By agreeing to participate in RAES, a market maker is automatically assigned trades based on the prevailing market quote that is then being disseminated. Consequently, it is important that the prevailing market quote be accurate, because otherwise market makers participating in RAES may be assigned trades at prices other than the actual prevailing market quote. In addition, in the event that incorrect quotes are displayed because of a quote dissemination problem, a customer's order could be filled at a price other than the quote the customer sees on display.

CBOE believes that the proposed interpretations to Rules 24.15 and 6.8 are necessary to prevent market makers from being assigned trades based on inaccurate or "stale" market quotes that are the result of a system malfunction, and to prevent customer orders from being filled based on such inaccurate or "stale" market quotes. CBOE also believes that the proposed interpretations are necessary to prevent filling customers' orders at prices different from the prices displayed.

The proposed rule change seeks to address these occurrences by vesting the senior person then in charge of the Exchange's Control Room with the authority to act quickly to turn off RAES if there is a system malfunction that affects the Exchange's ability to disseminate or update market quotes.⁵ Because RAES trades are based on the current disseminated quote, RAES trades would be based on inaccurate or "stale" quotes during a system malfunction that interferes with dissemination of current quote information. The Exchange believes it is important for staff persons in the Control Room to have the authority to

⁵ The CBOE represents that examples of "systems malfunctions" include: outages of the Exchange's autoquote system; communications disruptions between the Exchange and the processor for the Options Price Reporting Authority; and the unavailability of market data from the underlying market due to systems malfunctions in that market or in the communications between that market and CBOE. See Letter from Michael Meyer, Attorney, Schiff, Hardin and Waite, to John Ayanian, Attorney, Office of Market Supervision ("OMS"), Division of Market Regulation ("Market Regulation"), Commission, dated February 17, 1995.

turn off RAES because the Control Room will most likely learn of the system malfunction before Floor Officials or other Exchange staff. Consequently, Control Room staff can act in a timely manner to prevent trades based on "stale" market quotes.

If RAES is turned off because of the circumstances described above, the Control Room will disseminate a floor-wide announcement that RAES has been turned off,⁶ and the orders that would have been routed to RAES will be automatically rerouted to the floor broker printer in the trading crowd or to the appropriate member firm booth. Where the order is re-routed will depend upon parameters set by member firms for their customers' orders prior to entering the orders onto RAES.⁷ If the order is not re-routed to the member firm booth, the order will be automatically re-routed to the designated floor broker printer, where the floor broker assigned to that printer will promptly execute the order.⁸

Pursuant to the proposed interpretations, once the system malfunction has been corrected and the market quotes have been updated, either the senior person then in charge of the Exchange's Control Room, or the Order Book Official, or the RAES Supervisor may re-start RAES.

III. Commission Finding and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) of the Act.⁹ Specifically, the Commission finds

⁶ The Control Room immediately notifies the floor that RAES has been turned off by (1) transmitting a message to the book staff, floor broker, and member firm booth printers; (2) announcing it via the public address system; (3) posting it on the electronic administrative message board located in the pits; and (4) posting it on the CBOE bulletin board, which is available from any Exchange terminal. Telephone conversation between Tim Watkins, Market Operations Department, CBOE, and John Ayanian, Attorney, OMS, Market Regulation, Commission, on April 19, 1995.

⁷ According to CBOE, when determining order parameters for routing purposes, the member firms look to (1) the size of the order, (2) whether the series is on RAES, and (3) whether it is a market order or an immediately executable limit order. Telephone conversation between Edward Joyce, CBOE, Michael Meyer, Attorney, Schiff, Hardin and Waite, Michael Walinskas, Branch Chief, OMS, Market Regulation, Commission, and John Ayanian, Attorney, OMS, Market Regulation, Commission, on February 13, 1995.

⁸ Telephone conversation between Barbara Casey, Market Regulation Department, CBOE, and John Ayanian, Attorney, OMS, Market Regulation, Commission, on April 18, 1995.

⁹ 15 U.S.C. 78f(b)(5).

that the proposed rule change provides a reasonable mechanism for the CBOE to respond to system malfunctions that impact the integrity of the RAES system.

The Commission notes that this proposal only authorizes the senior person in the Control Room to turn off RAES in circumstances that involve technical system malfunctions affecting the accuracy of the CBOE's automated pricing system. While the Commission understands that it is impractical to enumerate every possible system malfunction that may affect the accuracy of market quotations, it notes, nonetheless, that not all "stale" or inaccurate market quotations are the result of system malfunctions, and that this proposal does not grant senior persons in the Control Room the authority to turn off RAES in these other circumstances.

Finally, the Commission believes that CBOE's alternative routing procedures, as proposed for RAES orders in the event of a system malfunction, should provide small investors an efficient and effective method for order execution in circumstances where RAES is turned off pursuant to this rule change.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁰ that the proposed rule change (File No. SR-CBOE-95-06), is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-35696; File No. SR-NSSC-94-19]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving Proposed Rule Change to Settle Certain Mutual Fund Services Transactions in Same Day Funds

May 9, 1995.

On November 8, 1994, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-NSSC-94-19) 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 January 3, 1994.² One comment letter

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1) (1988).

² Securities Exchange Act Release No. 35148 (December 23, 1994), 60 FR 155.

was received in favor of the proposed rule change.³ For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

NSCC's rule change enables NSCC to offer same-day funds money settlement capabilities as part of its Fund/Serv service for certain mutual fund products. Currently, NSCC's Fund/Serv service processes mutual fund transactions in which money settlement with many settling members occurs in next-day funds.⁴

Money settlement for money market and no-load mutual fund transactions outside NSCC's facilities typically occurs in same-day funds. Accordingly, NSCC is proposing to make and receive same-day funds payments in connection with the settlement of money market and no-load mutual fund transactions.

NSCC will not net a member's same-day funds debit or credit with the member's next-day funds debit or credit. Accordingly, NSCC Rule 12 is being modified to clarify that there will be more than one mutual funds settling trades summary which will reflect amounts payable to or payable by NSCC for the settlement of Mutual Fund Services transactions. NSCC will produce a mutual funds settling trades summary that will evidence the member's same-day funds mutual funds settlement obligation and a separate mutual funds settling trades summary that will evidence the member's mutual funds obligation settling in next-day funds. Technical changes also are being made to Sections B and C of NSCC's Rule 52 to conform the language regarding money settlement and the cross-references to NSCC's settlement rule.

Generally, NSCC intends to credit Fund/Serv members' accounts with mutual fund transaction credits settling in same-day funds only after it has received same-day funds payments from members in a debit position.⁵ However, to maintain flexibility NSCC will have the ability to credit members' accounts in same-day funds before receiving

³ Letter from Kevin Farragher, Director of Operations, Distribution & Service, Investment Company Institute, to Jonathan G. Katz, Secretary, Commission (January 5, 1995).

⁴ NSCC presently receives same-day funds payments from fund members and mutual fund processors for dividend amounts owed and processed through NSCC's Networking service and for commission amounts owed and processed through NSCC's Commission Settlement service.

⁵ Members in a debit position with NSCC will be required to make payment to NSCC by 3:00 p.m. on the day of settlement while those members in a credit position will receive payment from NSCC beginning at 5:00 p.m. on the day of settlement.

same-day funds payments from members unless NSCC has concerns regarding the financial stability of the members and if the aggregate of same day funds payments for which NSCC has not received payment but is crediting members' accounts does not exceed \$100 million per day.⁶ To protect against any possible losses incurred by NSCC if a member in a debit balance fails to pay NSCC, NSCC has the ability on the day following settlement date to reverse the credits paid to members.

II. Comments

The Commission received one comment regarding the filing.⁷ The commenter strongly supported and recommended adoption of the proposed rule change. The commenter based its support on the efficiency, economy, and standardization of services produced by fund/Serv. The commenter noted the importance of same day funds settlement in the three business day settlement cycle that will be implemented on June 7, 1995,⁸ and noted the ease in which this transition will take place with same day funds settlement available for some mutual funds.

III. Discussion

The Commission believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of Section 17A(b)(3)(F).⁹ 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. NSCC's proposed rule change to add same-day funds settlement capabilities to NSCC's Fund/Serv should help

⁶ Letter from Robert A. Schultz, NSCC, to Jerry Carpenter, Assistant Director, Division of Market Regulation, Commission (May 5, 1995).

If needed to fund same-day fund payments to members, NSCC has a liquidity resource comprised of a \$300 million line of credit. This liquidity resource is not exclusively dedicated to Fund/Serv settlement but also is available to NSCC to protect against losses in all of NSCC's systems and services.

⁷ *Supra* note 3.

⁸ On October 6, 1993, the Commission adopted Rule 15c6-1 under the Act, which establishes three business days after the trade date instead of five business days as the standard settlement timeframe for most broker-dealer transactions. The rule becomes effective June 7, 1995. Securities Exchange Act Release Nos. 33023 (October 6, 1993), 58 FR 52891 (release adopting Rule 15c6-1); 34952 (November 9, 1994), 59 FR 59137 (release changing the effective date of the three day settlement cycle). Exchange Act Release Nos. 33023 (October 6, 1993), 58 FR 52891 (release adopting Rule 15c6-1); 34952 (November 9, 1994), 59 FR 59137 (release changing the effective date of the three day settlement cycle).

⁹ 15 U.S.C. 78q-1(b)(3)(F) (1988).

achieve the prompt and accurate clearance and settlement of mutual fund transactions by making money market and no-load funds eligible for settlement through Fund/Serv. Moreover, the proposal will centralize the settlement of these types of mutual funds in a registered clearing agency and will allow mutual fund processors and brokers to take advantage of the efficiencies inherent in Fund/Serv.

IV. 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 Section 17A(b)(3)(F) of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR-NSCC-94-19) be, and hereby is approved.

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

Margaret H. McFarland,

Deputy Secretary.

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[Release No. 34-35704; File No. SR-NYSE-95-18]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc., Relating to the Extension of Rule 103A (Specialist Stock Reallocation)

May 10, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 2, 1995, 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 and II below, which items have been prepared by the self-regulatory organization. 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 extend the effectiveness of Rule 103A until September 10, 1996.

¹⁰ 17 CFR 200.30-3(a)(12) (1994).

¹ 15 U.S.C. § 78s(b)(1) (1988).

² 17 CFR 240.19b-4 (1994).