

After consummation of the proposed arrangements, securities industry members will continue to have access to high-quality, low-cost depository services provided under the mandate of the Act. The overall cost to the industry of having such services available will be reduced thereby permitting a more efficient and productive allocation of industry resources. Furthermore, because most of a depository's interface costs must be mutualized, thereby requiring some participants to subsidize costs incurred by others, CHX's withdrawal from maintaining depository facilities will reduce costs to DTC participants and thereby remove impediments to competition. Finally, CHX's ability to focus its resources on the operations of its exchange should help enhance competition among securities markets.

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

Written comments on the proposal from DTC Participants or others have not been solicited or received. The proposed arrangements are, however, consistent with recommendations made to the Boards of DTC and NSCC by the Vision 2000 Committee ("Committee"), a committee of industry representatives of the two Boards. The Committee's Report dated September 1994 states:

The industry owns a number of utilities that provide services related to the comparison, clearing, settlement and safekeeping of U.S. (and to a lesser degree, international) securities. These utilities overlap in two ways. * * * We believe that the industry's and, as important, the investors', overall costs can be reduced and safety and soundness can be enhanced by eliminating these overlaps where there is no clear advantage to having specialization or competing development.

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 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. 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 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, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to the file number SR-DTC-95-22 and should be submitted by December 19, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,
Deputy Secretary.

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[Release No. 34-36496; File No. SR-NASD-95-50]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Amending the Buy-in Procedures in Section 59 of the Uniform Practice Code to Clarify the Appropriate Delivery Deadlines for Buy-in Notices

November 20, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 15, 1995, the National Association of Securities Dealers, Inc. ("NASD" or "Association") 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 NASD.¹ The

⁸ 17 CFR 200.30-3(a)(12) (1994).

¹ The proposal was originally filed with the Commission on October 26, 1995. The NASD subsequently submitted Amendment No. 1 to the filing. This document provides notice of the filing as amended. Letter from Elliot Curzon, Assistant

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

Pursuant to the provisions of Section 19(b)(1) of the Act, the NASD is herewith filing a proposed rule change to amend Section 59 of the Uniform Practice Code ("UPC" or "Code") to revise the buy-in procedures to clarify the appropriate delivery deadlines for buy-in notices. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

Uniform Practice Code

Close-Out Procedure

"Buying-in"

Sec. 59.

A contract which has not been completed by the seller according to its terms may be closed by the buyer not sooner than the third business day following the date delivery was due, in accordance with the following procedure:

Notice of "buy-in"

(a)(1) Written notice of "buy-in" shall be delivered to the seller at his office not later than 12 noon, his time, two business days preceding the executing of the proposed "buy-in."

(2) For purposes of this rule written notice shall include an electronic notice through a medium that provides for an immediate return receipt capability. Such electronic media shall include but not be limited to facsimile transmission, a computerized network facility, etc.

Information contained in "buy-in" notice

(b)(1) Every notice of "buy-in" shall state the date of the contract to be closed, the quantity and contract price of the securities covered by said contract, the settlement date of said contract and any other information deemed necessary to properly identify the contract to be closed. Such notice shall state further that unless delivery is effected at or before a certain specified time, which may not be prior to 11:30 a.m. local time in the community where the buyer maintains his office, the security may be "bought-in" on the date specified for the account of the seller. If the originator of a "buy-in" in a depository eligible security is a participant in a registered securities

depository, the *specified delivery time may not be prior to 3:30 p.m. Eastern Time and the "buy-in"* may not be executed prior to [2:30] 3:00 p.m., Eastern Time. Each "buy-in" notice shall also state the name and telephone number of the individual authorized to pursue further discussions concerning the buy-in.

(2) Notice may be redelivered immediately to another broker/dealer from whom the securities involved are due in the form of a re-transmitted notice ("re-transmit"). Ar[R]e-transmitted notice of buy-in must be delivered to subsequent broker/dealers not later than 12 noon, recipient's local time, on the [one] business day preceding the time and date of execution of the proposed buy-in, and the time specified for delivery may not be prior to the time specified in the original notice.

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 NASD 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 NASD 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

Under Section 59 of the Code, when the seller has not completed a contract of sale of securities by delivering the securities called for in the contract on settlement day, the buyer may close the contract by purchasing the subject securities in the open market ("buying-in"). When securities are bought in to complete a contract, the seller is liable for any difference between the contract price and the buy-in price.

Pursuant to subsection 59(a) of the Code, a buy-in is initiated by the buyer delivering a notice of buy-in to the seller at his office not later than 12 noon, the seller's time, two business days preceding the execution of the proposed buy-in. Subsection 59(b) provides that the notice must include the terms of the contract to be closed and must state that unless delivery is effected at or before a certain specified time not earlier than 11:30 A.M., the buyer's local time, the security may be bought in for the

account of the seller (meaning the seller assumes the liability for the market price of the security bought in). Subsection 59(b) also provides that if the originator of the buy-in notice is a participant in a registered securities depository, and the security to be bought in is a depository eligible security, the buy-in may not be executed before 2:30 P.M. Eastern Time.

The NASD has identified an inconsistency in subsection 59(b) in that the provisions permit a buy-in notice to specify a delivery deadline no earlier than 11:39 A.M., local time, yet the buy-in may not be executed before 2:30 P.M., Eastern Time. If the seller obtained securities and tendered them for delivery after the notice deadline but before the buy-in was executed, the provisions of the rule and the notice could permit the buyer to refuse delivery and subject the seller to the risk of an execution at a price higher than the original contract price.

In order to resolve this anomaly, the NASD is proposing to amend subsection 59(b) of the UPC to modify the delivery times permitted to be specified in the buy-in notice. With respect to buy-in notices for depository eligible securities where the originator is a depository participant, the NASD is proposing to amend subsection 59(b) to provide that the notice may not specify a delivery time earlier than 3:00 P.M. Eastern Time.² By limiting this restriction to depository eligible securities and depository participants, the rule retains the current provision permitting broker-to-broker buy-ins specifying an earlier delivery time (no earlier than 11:30 A.M. local time).

In addition, the NASD is proposing to amend subsection 59(b)(2), which permits the recipient of a buy-in notice to re-transmit the notice to another broker/dealer from whom the subject securities are due. The proposed amendment to subsection 59(b)(2) provides that a re-transmitted buy-in notice must be delivered to the recipient not later than 12 noon, seller's local time, on the business day preceding the buy-in date and that the specified delivery time in the re-transmitted notice must not be earlier than the time specified in the original notice. This amendment clarifies the existing language and will ensure that the

²The NASD notes that with the advent of same day funds settlement (SDFS) in early 1996 and the new settlement time frames associated with the Depository Trust Company's SDFS System, the appropriate buy-in execution time in Section 59(b) should not be prior to 3:00 P.M. Eastern Time.

recipient of the retransmitted notice has at least one full business day's notice.³

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act⁴ in that the proposed rules will facilitate the functioning of the clearance and settlement system by eliminating an inconsistency in the buy-in process and refining the provisions of the Code relating to buy-ins to recognize new developments in the clearance and settlement system.

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

The NASD 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, as amended.

(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. 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

³The NASD notes that because subsection 59(b)(1) permits the buy-in notice to specify a delivery deadline of 11:30 A.M. local time for broker-to-broker buy-ins in non-depository eligible securities, it is possible that a buy-in notice retransmitted at 12 noon the previous business day would afford the recipient 23½ hours to deliver. Nevertheless, the proposed amendment is an improvement to the current rule language which arguably permits retransmittal to occur at the end of the previous business day, affording the recipient as little as 18½ hours notice.

⁴ 15 U.S.C. § 78o-3.

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. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to SR-NASD-95-50 and should be submitted by December 19, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,
Deputy Secretary.

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[Release No. 34-36495; File No. SR-NSCC-95-13]

**Self-Regulatory Organizations;
National Securities Clearing
Corporation; Notice of Filing of a
Proposed Rule Change Enabling
Members Settling Mutual Fund
Transactions in Same Day Funds to
Settle Through a Settling Bank**

November 20, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on November 3, 1995, 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. On November 14, 1995, NSCC amended the filing to make technical changes.² 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**

NSCC proposes modifying its rules to establish a new membership category for settling banks that will enable

members settling mutual fund transactions in same day funds to settle their obligations through a settling bank.³

**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.⁴

**A. Self-Regulatory Organization's
Statement of the Purpose of, and
Statutory Basis for, the Proposed Rule
Change**

The purpose of the proposed rule change is to modify NSCC's rules to enable members settling mutual fund transactions in same day funds to settle their obligations through a settling bank. The proposed rules will establish a new membership category for settling banks. Any bank that wants to become a settling bank will be required to meet the operational and financial requirements established by NSCC. To qualify as a settling bank, each bank must have short-term obligation ratings of at least A-2 by Standard and Poor's Corp. or P-2 by Moody's Investors Services Inc. Banks that do not meet this standard will be considered on an exception basis. Each bank that qualifies as a settling bank will be required to enter into a separate agreement with each member on whose behalf it will perform settlement functions.

The proposed rules provide that settling banks will have the opportunity to refuse to settle for one or more members by notifying NSCC within the time established by NSCC. The proposed rules also specify that settling banks will be required to wire funds by the deadline imposed by NSCC or be subject to a penalty fee. In addition, settling banks that fail to pay on settlement day will be required to cover NSCC's interest costs due as a result of their failure to settle in a timely manner. NSCC's proposed rule change also makes conforming changes to relevant sections of NSCC's rules.

NSCC believes the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because it will facilitate the prompt and accurate clearance and settlement of securities transactions.

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

NSCC does not perceive 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 have been solicited or received. NSCC will notify the Commission of any written comments received.

**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 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. 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 those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street N.W., Washington, D.C.

¹ 15 U.S.C. § 78s(b)(1) (1988).

² Letter from Karen L. Saperstein, Vice President/Director of Legal & Deputy General Counsel, NSCC, to Jerry W. Carpenter, Assistant Director, Division of Market Regulation, Commission (November 13, 1995).

³ The text of the proposed rule change is attached as Exhibit A to File No. SR-NSCC-95-13 and is available for review in the Public Reference Section of the Commission.

⁴ The Commission has modified the text of the summaries prepared by NSCC.