

for disputes because the claims will still be heard by three arbitrators.

The Commission believes that the proposed rule change to Rule 10302 (f) and (h)(3), where the Director of Arbitration will "appoint," rather than "select," the public arbitrator for simplified arbitration, is consistent with the Act in that it is not a substantive change; the Director of Arbitration will continue to be the individual who is responsible for choosing the arbitrator for these cases.¹²

As noted above, Amendment No. 1 amends Section 10308(a) of the Code, Designation of Number of Arbitrators, to delete the change in the original filing that states that a majority of the arbitrators appointed shall be public arbitrators, and retain the original language, that at least a majority of the arbitrators appointed shall not be from the securities industry. The Commission finds good cause to approve Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission notes that this a non-substantive change in that it restores the rule to its original language and conforms the language with similar wording in Section 10308(b) of the Code. Accordingly, the Commission believes that it is consistent with Section 15A(b)(6) of the Act to approve Amendment No. 1 to the proposal on an accelerated basis.

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1 to the rule proposal. 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 at the Commission's Public Reference Room. Copies of such filing also will be

¹² The Commission notes that the NASD has stated that it will implement this rule filing at the same time as a rule filing dealing with amendments to the arbitration fees, yet to be filed with the Commission. See letter from Elliot R. Curzon, Assistant General Counsel, NASDR, to Katherine England, Assistant Director, Market Regulation, Commission, dated May 5, 1997.

available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-97-22 and should be submitted by June 11, 1997.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹³ that the proposed rule change (SR-NASD-97-22), including Amendment No. 1, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38632; File No. SR-NSCC-97-02]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Granting Approval of a Proposed Rule Change to Modify NSCC's Rules To Permit Unit Investment Trusts To Be Processed Through Fund/SERV, Networking, and Mutual Fund Commission Settlement Services

May 14, 1997.

On February 10, 1997, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-NSCC-97-02) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ to permit unit investment trust ("UITs") to be processed through NSCC's Fund/SERV, Networking, and Mutual Fund Commission Settlement Services.² Notice of the proposal was published in the **Federal Register** on March 28, 1997.³ No comment letters were

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² These services collectively constitute NSCC's Mutual Fund Services. For a complete description of NSCC's Fund/SERV, Networking, and Mutual Fund Commission Services, refer to Securities Exchange Act Release Nos. 31937 (March 1, 1993), 58 FR 12609 [File No. SR-NSCC-92-14] (order approving proposed rule change regarding Fund/SERV system); 26376 (December 20, 1988), 53 FR 52546 [File No. SR-NSCC-88-08] (order approving Networking); and 31579 (December 17, 1992), 57 FR 60018 [File No. SR-NSCC-92-13] (order approving the Mutual Fund Commissions Settlement System and consolidating the Mutual Fund Commissions Settlement, Fund/SERV, and Networking Systems under NSCC's Mutual Fund Services).

³ Securities Exchange Act Release No. 38428 (March 21, 1997), 62 FR 14954.

received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

I. Description

Under the rule change, NSCC will permit UITs to be processed through NSCC's Fund/SERV, Networking, and Mutual Fund Commission Settlement Services. Prior to the rule change, UITs were eligible for NSCC processing through NSCC's continuous net settlement ("CNS") system only.⁴ Because Mutual Fund Services only members (*i.e.*, primarily bank broker-dealers and insurance company subsidiaries) are not permitted access to NSCC's CNS system, they had to settle UIT trades ex-clearing with their UIT positions held with a trustee in book-entry form. The rule change will allow Mutual Fund Services only members to process and settle UIT trades through the Fund/SERV, Networking, and Mutual Fund Commission Settlement systems.

The settlement process for UIT transactions through NSCC's Mutual Fund Services will be processed the same as if these transactions were processed in the CNS system, but UIT transactions processed through the Mutual Fund Services will not be guaranteed. If a Mutual Fund Services only member wants its UIT transactions submitted to NSCC to be guaranteed, it must submit or have submitted on its behalf such transactions to NSCC's CNS system.

II. Discussion

Section 17A(b)(3)(F)⁵ provides that the rules of a clearing agency must be designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission believes that the rule change is consistent with NSCC's obligations under the Act because it permits Mutual Fund Services only member to process UIT transactions within NSCC. By permitting UIT transactions to be processed through NSCC's Fund/SERV, Networking, and Mutual Fund

⁴ A group of NSCC participants, bank trustees, and industry organizations such as the Securities Industry Association's Securities Operation Division, the Regional Municipal Operations Association, and National Unit Trust Association requested that NSCC permit UITs to be eligible for processing through its Fund/SERV, Networking, and Mutual Fund Commission Settlement Services.

⁵ 15 U.S.C. 78q-1(b)(3)(F).

Commissions Settlement systems, Mutual Fund Services only members will no longer have to settle UIT transactions through exception processing or ex-clearing. As a result, this change should further perfect the mechanism of a national clearance and settlement system. At the same time, because NSCC does not apply its trade guarantee to transactions processed through Mutual Fund Services, processing and settling UIT transactions through Mutual Fund Services should not pose any significant additional risk to NSCC and therefore should not effect NSCC's ability to safeguard securities and funds.

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 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-97-02) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁶

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-38630; File No. SR-NYSE-97-09]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Amendments to Percentage Order Rule 123A.30

May 13, 1997.

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 March 25, 1997, 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 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 proposed rule change consists of amendments to Exchange Rule 123A.30 ("Rule"). The filing proposes to amend the Rule to provide that the percentage orders held by a specialist may be elected by the execution of a previously elected portion of a percentage order that is on the opposite side of the market. The filing also proposes to amend the Rule to permit the specialist to convert a percentage order on a destabilizing tick, as otherwise permitted by the Rule, when the transaction is 10,000 shares or more or represents a quantity of stock having a market value of \$500,000 or more (whichever is less).¹

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 self-regulatory organization 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 self-regulatory organization 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

A percentage order is a limited price order to buy or sell fifty percent (50%) of the volume of a specified stock after its entry. A percentage order is essentially a memorandum entry left with a specialist which becomes a "live" order capable of execution in one of two ways: (i) All or part of the order can be "elected" as a limit order on the specialist's book based on trades in the market; or (ii) all or part of the order can be "converted" into a limit order to make a bid or offer or to participate directly in a trade. Percentage orders were first adopted in 1972 to permit

¹ The Exchange previously filed a proposed change to Rule 123A.30 which would provide that a converted percentage order retains its status on the specialist's book unless the transaction is effected on a higher bid, or a new higher bid is made, or the percentage order was not converted at its maximum limit price. That proposed rule change is still pending with the Commission. See Securities Exchange Act Release No. 37495 (July 30, 1996), 61 FR 40699 (August 5, 1996) (File No. SR-NYSE-96-16).

large size orders to trade along with the trend of the market.

The election process. Under the election process, as trades occur at the percentage order's limit price or better, an equal number of shares of the percentage order are "elected" and become a limit order on the specialist's book at the price of the electing sale. Most percentage orders are entered as "last sale percentage orders," meaning that they may be executed at the price at which they were elected, or at a better price. These orders may not, however, be executed at an inferior price to the electing sale even if that inferior price is still within the limit price on the order.

The Rule provides that percentage orders shall not be elected by any portion of volume which results from the execution of a previously elected portion of a percentage order. The intent of this restriction is to prevent "chain reaction" executions of percentage order whereby executions of elected portions of percentage orders trigger additional elections. Such a result would usually be contrary to the objectives of those entering percentage orders, who generally want to go along with the overall trend of the market as reflected by other market interest, without necessarily leading that trend.

As currently drafted, the Rule does not distinguish between election of percentage orders on the same side of the market and percentage orders on opposite sides of the market. The Exchange believes that the rationale of the Rule, however, suggests that the restriction should be applied only to percentage orders on the same side of the market, as "same side" orders are the ones to be executed along with the market trend (*i.e.*, buy percentage orders would be executed along with other buying interest, and sell percentage orders would be executed along with other selling interest).

Proposed change to the election process. The Exchange is proposing to amend the Rule to provide that the percentage orders held by a specialist may be elected by the execution of a previously elected portion of a percentage order that is on the opposite side of the market.

For example, assume that the market is 20 to 20¹/₄, 2,000 by 2,000, with the 2,000 share offer representing 2,000 "elected" shares of a percentage order to sell. The specialist then receives a percentage order to buy 10,000 shares at a limit price of 20⁵/₈ after which he receives through SuperDOT an order to buy 1,000 shares at the market. After bidding 20¹/₈ on behalf of the SuperDOT order, the specialist executes that order

⁶ 17 CFR 200.30-3(a)(12).