

Advisory Board are from member firms with fewer than twenty registered representatives. Finally, the NASD notes that its by-laws allow for the nomination of dissident candidates for specific positions, such as the small firm representative, through the by-laws' contested election procedures.¹³

III. Discussion

As discussed below, the Commission has determined to approve the Association's proposal incorporating a small firm Board representative. The standard by which the Commission must evaluate a proposed rule change is set forth in Section 19(b) of the Act. The Commission must approve a proposed NASD rule change if it finds that the proposal is consistent with the requirements of Section 15A of the Act¹⁴ and the rules and regulations thereunder that govern the NASD.¹⁵ In evaluating a given proposal, the Commission examines the record before it and all relevant factors and necessary information. In addition, Section 15A of the Act establishes specific standards for NASD rules against which the Commission must measure the proposal.¹⁶

The Commission believes the creation of a small firm representative is consistent with that portion of Section 15A requiring fair member representation in the governance of the NASD.¹⁷ As discussed above, the Association made substantial changes to its corporate governance structure in 1997, many of which responded to the Commission's 21(a) Report and related documents. After these changes, the NASD created the Small Firm Advisory Board to address concerns raised by small firms about their ability to participate in the new NASD corporate structure. Today, the Commission approves the reservation of a Governor position to represent member firms with 150 or fewer registered representatives. The Commission agrees with the NASD that the changes, as proposed, will enhance the representation of small firms within the NASD corporate governance structure by inserting a small firm representative into the center of the decisionmaking process, the NASD Board of Governors. As a member of the Board of Governors, the small firm representative, unlike a member of the Small Firm Advisory Board, will

have an opportunity to actively participate in the governance of the NASD and keep abreast of the Association's new initiatives.

Additionally, the Commission believes that the NASD acted within its discretion by defining a small member firm as one having 150 or fewer registered representatives. Approval of the exercise of this discretion is supported by the fact that the NASD by-laws include contested election provisions approved in connection with the 1997 restructuring. These provisions will allow organizations such as the IBDA to present candidates for the NASD Board of Governors to the NASD membership during the regular election process, if they do not like those nominated by the NASD Nominating Committee. The existence of these contested election procedures further supports the finding that the amendments approved today satisfy the fair representation requirements of the Act discussed above, since these provisions permit presentation of an alternative nominee for the small firm representative Board position.

IV. Conclusion

The Commission believes that the proposed rule change is consistent with the Act, and, particularly, with Section 15A thereof.¹⁸ In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation.¹⁹

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁰ that the portion of the proposed rule change (SR-NASD-98-56) relating to reservation of a small firm representative on the NASD Board of Governors, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²¹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98-29513 Filed 11-3-98; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40614; File No. SR-NSCC-98-09]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Mutual Fund Profile Service

October 28, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on July 22, 1998, 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 by NSCC. 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 purpose of the proposed rule change is to increase the information available through NSCC's Mutual Fund Profile Service.

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.²

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

Currently, MFPS provides NSCC's members with an automated method of transmitting and receiving information pertaining to mutual funds through a centralized and standardized facility.³

¹³ See Article VII, Section 10 to the NASD by-laws. In this context, dissident candidates are those not nominated by the NASD Nominating Committee.

¹⁴ 15 U.S.C. 78o-3.

¹⁵ 15 U.S.C. 78s(b).

¹⁶ 15 U.S.C. 78o-3.

¹⁷ 15 U.S.C. 78o(b)(4).

¹⁸ 15 U.S.C. 78o-3.

¹⁹ 15 U.S.C. 78(c)f.

²⁰ 15 U.S.C. 78s(b)(2).

²¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² The Commission has modified the text of the summaries prepared by the NSCC.

³ For a complete description of MFPS, refer to Securities Exchange Act Release No. 37171 (May 14, 1996), 61 FR 24343 [File No. SR-NSCC-96-04] (order approving the proposed rule change establishing the daily price and rate file phase of MFPS).

Under the proposed rule change, NSCC will expand the information available through MFPS to include a member profile, security issue profile, and distribution declaration information profile.

The "member profile" will provide members with fund data including personnel contacts, telephone numbers, addresses, commission payment procedures, processing capabilities, and information regarding NSCC members which act as agents for other NSCC members.

The "security issue profile" will provide members with minimum purchase or maintenance requirements, fund features, and various fund processing characteristics for all the individual funds included in MFPS.

The "distribution declaration information profile" will provide members with projected and/or actual record dates, ex-dates, and reinvestment and payable dates for dividend and capital gain payments, and it may also include Rule 12b-1 plan and other commission payout information.

NSCC expects to implement the new profiles in December 1998 and will notify its members of the new services when they become available.

NSCC believes that the proposed rule change is consistent with Section 17A of the Act⁴ and the rules and regulations thereunder.

(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 have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act⁵ and pursuant to Rule 19b-4(e)(4)⁶ promulgated thereunder because the proposal effects a change in an existing service that does not adversely effect the safeguarding of securities or funds in the custody or control of the clearing agency or for

which it is responsible and does not affect the respective rights or obligations of the clearing agency or persons using the service. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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 N.W., Washington, DC 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 Section, 450 Fifth Street, N.W., Washington, DC 20549.

Copies of such filing also will be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR-NSCC-98-09 and should be submitted by November 25, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98-29468 Filed 11-3-98; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40618; File No. SR-NSCC-98-12]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Expanding the Fund/Serv Service

October 29, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on July 30, 1998, 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. 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 expands NSCC's Fund/Serv service to permit the transfer of eligible assets in all types of retirement plan accounts.²

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. 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 statement.³

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

On November 15, 1996, the Commission approved NSCC's rule filing to allow members to transfer assets held in an individual retirement account ("IRA") to another mutual fund

¹ 15 U.S.C. 78s(b)(1).

² Fund/Serv, which is part of NSCC's Mutual Fund Services, permits NSCC members to process and to settle on an automated basis mutual fund purchase and redemption orders and to transmit registration instructions.

³ The Commission has modified the text of the summaries prepared by NSCC.

⁴ 15 U.S.C. 78q-1.

⁵ 15 U.S.C. 78s(b)(3)(A).

⁶ 17 CFR 240.19b-4(e)(4).

⁷ 17 CFR 200.30-3(a)(12).