paragraph 10. Namely, Paragraph 6 will need to be amended to reflect that all specialist/competing specialists will be responsible for orders directed to him/her. Likewise, Paragraph 9 will need to be amended to reflect certain BEACON system changes which will update quotations more efficiently, removing the burden from the regular specialist.

In today's BEACON system, an agency order is automatically routed to the specialist quote in accordance with price/time priority amongst competing specialists if such quote is at the NBBO. Such order routing has allowed specialists with orderflow to reduce their costs and compete more effectively for public customer business without sacrificing quality of executions. However, the economic value of this practice has diminished considerably with the introduction of a number of Commission led initiatives in recent years, particularly the introduction of decimalization. Implementation of the proposed rule will enable the order to be routed to the designated specialist and will enable competing specialists to exercise greater control over more of their firm's orderflow and provide price improvement opportunities to their customers over existing specialist proprietary quotations. All ITS transactions and non-directed orders will continue to be routed according to price/time priority, and available for price improvement by exposure to the specialists/competing specialists.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of section 6(b) of the Act,[8] in general, and section 6(b)(5) of the Act,[9] in particular, which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers or dealers.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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 Exchange 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, 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, NW, Washington, DC 20549–0609. 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. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–BSE–2001–08 and should be submitted by May 17, 2002.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–10310 Filed 4–25–02; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45798; File Nos. SR–NASD–2002–24 and SR–NYSE–2002–10]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc. and the New York Stock Exchange, Inc.; Order Approving Proposed Rule Changes Relating to Anti-Money Laundering Compliance Programs

April 22, 2002.

I. Introduction

On February 15, 2002, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its subsidiary NASD Regulation, Inc. (''NASD Regulation''), filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish NASD Rule 3011, Anti-Money Laundering Compliance Program. The proposed rule change prescribes the minimum standards required for each member firm's anti-money laundering program. On February 25, 2002, notice of the proposed rule change was published in the **Federal Register**.[3] The Commission received four comments on the proposal.[4]

On February 27, 2002, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed a proposed rule change to adopt NYSE Rule 445, Anti-Money Laundering Compliance Program. The proposed rule change would require each member and member organization to develop and implement an anti-money laundering compliance program consistent with applicable provisions of the Bank Secrecy Act and the regulations thereunder. On March 7, 2002, notice of the proposed rule change was published in the **Federal Register**.[5] The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 45457 (February 19, 2002), 67 FR 8565.

[4] March 18, 2002 letter from Alan E. Sorcher, Vice President and Associate General Counsel, Securities Industry Association (''SIA''), to Jonathan G. Katz, Secretary, SEC (''SIA Letter''); March 18, 2002 letter from Betty Santangelo, Schulte Roth & Zabel LLP, to Jonathan G. Katz, Secretary, SEC (''Schulte Roth Letter''); March 11, 2002 letter from W. Richard Mason, General Counsel, Mosaic Funds, to Secretary, SEC (''Mosaic Letter''); March 18, 2002 letter from Craig S. Tyle, General Counsel, Investment Company Institute (''ICI''), to Jonathan G. Katz, Secretary, SEC (''ICI Letter'').

[5] Securities Exchange Act Release No. 45487 (February 28, 2002), 67 FR 10463.

Commission received two comments on the proposal.[6]

The NASD provided a response to the comment letters on April 17, 2002.[7] The NYSE provided a response to the comment letters on April 16, 2002.[8]

This order approves the NASD and the NYSE proposed rule changes.

II. Description of the Proposed Rule Changes

SR–NASD–2002–24

NASD Regulation proposes to establish NASD Rule 3011, Anti-Money Laundering Compliance Program, which requires financial institutions, including broker-dealers, by April 24, 2002, to establish and implement anti-money laundering compliance programs designed to ensure ongoing compliance with the requirements of the Bank Secrecy Act and the regulations promulgated thereunder. NASD Regulation proposes its anti-money laundering compliance program rule to guide member firms on how to comply with Section 352 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (''PATRIOT Act''). The proposed rule change prescribes the minimum standards required for each member firm's anti-money laundering program.

Under the proposal, on or before April 24, 2002, each NASD member is required to develop and implement a written anti-money laundering program reasonably designed to achieve and monitor the member's compliance with the requirements of the Bank Secrecy Act, and the implementing regulations promulgated thereunder by the Department of the Treasury (''Treasury''). Each member organization's anti-money laundering program must be approved, in writing, by a member of senior management.

The anti-money laundering programs required under the proposal, at a minimum, must (1) establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of transactions required under 31 U.S.C. 5318(g) and the implementing regulations thereunder; (2) establish and implement policies, procedures, and internal controls reasonably designed to achieve compliance with the Bank Secrecy Act and the implementing regulations thereunder; (3) provide for independent testing for compliance to be conducted by member personnel or by a qualified outside party; (4) designate an individual or individuals responsible for implementing and monitoring the day-to-day operations and internal controls of the program; and (5) provide ongoing training for appropriate personnel.

SR–NYSE–2002–10

The NYSE proposes to adopt NYSE Rule 445, Anti-Money Laundering Compliance Program. The proposed Rule, like the NASD proposal, requires each member and member organization to develop and implement an anti-money laundering compliance program consistent with applicable provisions of the Bank Secrecy Act and the regulations thereunder.

Under the NYSE's proposal, each member organization and each member not associated with a member organization must develop and implement a written anti-money laundering program reasonably designed to achieve and monitor compliance with the requirements of the Bank Secrecy Act, and the implementing regulations promulgated thereunder by Treasury. A member of senior management must approve, in writing, each member organization's anti-money laundering program. At a minimum, the anti-money laundering programs must (1) establish and implement policies and procedures that can be reasonably expected to detect and cause the reporting of transactions required under 31 U.S.C. 5318(g) and the implementing regulations thereunder; (2) establish and implement policies, procedures, and internal controls reasonably designed to achieve compliance with the Bank Secrecy Act and the implementing regulations thereunder; (3) provide for independent testing for compliance to be conducted by member or member organization personnel or by a qualified outside party; (4) designate, and identify to the NYSE a person or persons responsible for implementing and monitoring the day-to-day operations and internal controls of the program and provide prompt notification to the NYSE regarding any change in such designation(s); and (5) provide ongoing training for appropriate persons.

III. Summary of Comments

The Commission received four letters commenting on the NASD proposal.[9] Of those four comment letters, two of them also were submitted as comments to the NYSE proposal.[10] One commenter expressed support for the proposals, calling sound anti-money laundering programs ''the starting point in the industry's effort in the prevention of money-laundering and the financing of terrorism.'' [11] All of the commenters suggested that the proposals be modified.

While the SIA expressed support for the proposed rules, it requested that the requirements imposed by the proposed rules be clarified. First, it requested that the rules require firms to have a written anti-money laundering program in place by April 24, 2002, but not to have implemented the program by that date.[12] The SIA asserts that ''the language of Section 352 of the Patriot Act is clear that the requirement is to 'establish' anti-money laundering programs,'' not to have actually implemented the programs by April 24, 2002.[13]

The SIA also requests clarification that the anti-money laundering programs required by April 24, 2002 are only required to account for the Bank Secrecy Act requirements that are in effect by that same date.[14] The SIA states this clarification is necessary because some provisions of the PATRIOT Act have already become effective, while other provisions will become effective on a rolling basis throughout this year.[15] The SIA questions the ability of firms to implement all aspects of these programs by April 24, 2002.[16] For example, the SIA expressed strong support for the requirement that broker-dealers report suspicious activity. It also expressed concern that the rules could be read to require a firm to implement policies for reporting suspicious transactions before the time required by the statute.[17] According to the commenter, Section 356 of the Patriot Act requires that broker-dealers be subject to suspicious activity reporting requirements. Under Treasury's proposed rule implementing Section 356, such provision would take effect 180 days after a final rule is

[6] The SIA Letter and the Schulte Roth Letter were filed as comments to both the NASD proposal and the NYSE proposal.

[7] *See* April 17, 2002 letter from Patrice M. Gliniecki, Vice President and Acting General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), SEC (''NASD Response Letter'').

[8] *See* April 16, 2002 letter from Richard P. Bernard, Assistant Corporate Secretary, NYSE, to Nancy Sanow, Assistant Director, Division, SEC (''NYSE Response Letter'').

[9] *See* footnote 4, *supra.*

[10] *See* footnote 6, *supra.*

[11] SIA Letter at 2.

[12] SIA Letter at 2–3.

[13] *Id.* at 3.

[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] *Id.*

issued by Treasury.[18] The NYSE and NASD proposals require firms to establish and implement policies to comply with the Bank Secrecy Act and implementing regulations by April 24, 2002.

Finally, the SIA states the proposed rules should allow for extension beyond the April 24, 2002 compliance date, where full compliance cannot be timely achieved.[19] To obtain an extension, the SIA suggests a firm would be required to demonstrate the firm made a good faith effort to comply, and that there were extenuating circumstances that justify an extension.[20]

The Schulte Roth Letter suggests that the Commission and the self-regulatory organizations should allow an exemption from the anti-money laundering program requirement for broker-dealers that do not maintain traditional customer relationships, such as investment partnerships and corporations that are exempt from registration under the Investment Company Act of 1940.[21] Schulte Roth states these entities elect to register, or create a wholly-owned subsidiary to register, as a broker-dealer to obtain more favorable margin treatment. According to the commenter, these entities are not required to register as broker-dealers, and do not function as traditional broker-dealers, in that they do not engage in certain activities that are typically associated with a broker-dealer.[22] Furthermore, the commenter states that these broker-dealers do not advertise or hold themselves out to the public as a dealer, nor do they render any incidental investment advice, extend or arrange for the extension of credit to others in connection with securities, or purchase or sell securities as principal from or to customers.[23] Accordingly, the commenter asserts that these broker-dealers should not be required to adopt an anti-money laundering program.[24]

The commenter also asserts that broker-dealers that merely engage in stock lending activities with other broker-dealers, agency lenders, and mutual funds, should not be required to adopt an anti-money laundering program, because they do not conduct transactions involving the purchase or sale of securities in the traditional sense and do not involve traditional customer relationships.[25]

Similarly, one commenter suggested that the NASD proposal be modified to state that a broker-dealer that does not receive customer funds or open or hold customer accounts is deemed to satisfy the anti-money laundering program requirements by stating its understanding that it will be required to develop such a program before it actually receives customer funds or opens or holds customer accounts.[26] The commenter suggests this modification to prevent broker-dealers that do not accept or hold customer accounts or receive any customer funds from going through the ''futile exercise'' of establishing programs that cannot be implemented because the broker-dealers are powerless to identify any potential money-laundered money or accounts.[27]

The ICI submitted comments to address the NASD's proposal as it applies to NASD members that underwrite securities issued by registered investment companies.[28] The ICI expressed strong support for ''effective rules to combat potential money laundering activity in the investment company industry.'' It also proposed an exception to proposed NASD Rule 3011 for any NASD member with respect to its activities as a principal underwriter of mutual fund securities where the mutual funds such NASD member underwriters have established an anti-money laundering program that meets the requirements of Section 352 of the PATRIOT Act and any rules that apply to funds adopted thereunder.[29]

The ICI provides two reasons for its proposed exception. First, the ICI states the exemption would avoid unnecessary regulatory duplication. The PATRIOT Act's requirement to establish an anti-money laundering compliance program by April 24, 2002 applies to funds and to broker-dealers. The ICI states that proposed regulations setting minimum standards for fund compliance programs are imminent. Where an underwriter is part of a fund complex, the ICI states it would be ''logical'' for any relevant activities of the underwriter to be addressed by the funds' anti-money laundering program. In these situations, the ICI states there is no need for underwriters to comply with separate requirements imposed by the NASD on its members.[30]

Second, the ICI states the exception would eliminate a bifurcated anti-money laundering compliance examination regime. The ICI states that compliance with the anti-money laundering program requirements for funds will be examined by the Commission's Office of Compliance, Inspections and Examinations (''OCIE''). The ICI believes that OCIE is best able to examine funds comprehensively for compliance with anti-money laundering requirements. To subject fund underwriters to NASD examination authority would, according to the ICI, ''create a piecemeal regulatory scheme that would be both duplicative and inefficient.'' [31]

The NYSE's Response to Comments

On April 16, 2002, the NYSE submitted a response to comments.[32]

In response to the suggestion that Section 352 of the PATRIOT Act requires only that firms ''establish'' written anti-money laundering programs by April 24, 2002, the NYSE states that members and member organizations must be in compliance with federally mandated requirements of Section 352 by April 24, 2002, by establishing written policies and procedures that have been approved in writing by senior management, that address all applicable Bank Secrecy Act requirements. These policies should address the member organization's employee training program and independent audit functions.[33] The NYSE also indicates that proposed NYSE Rule 445 requires that the anti-money laundering programs provide for independent testing for compliance, and that policies, procedures, and internal controls must be reasonably designed to achieve compliance with applicable federal requirements. The NYSE expects implementation of the required independent testing function to be ''timely and effective.'' [34] As for implementation of policies related to anti-money laundering requirements that have yet to be adopted, the NYSE expects they will be implemented concurrently with their respective effective dates.[35] The NYSE further clarified that it will not require compliance with Bank Secrecy Act provisions before their prescribed effective dates.[36] The NYSE also confirmed its understanding that the suspicious activity reports (''SAR'') reporting requirements under 31 U.S.C. 5318(g) are expected to become effective

[18] *Id.*
[19] *Id.* at 4.
[20] *Id.*
[21] Schulte Roth Letter at 3–4.
[22] *Id.*
[23] *Id.*
[24] *Id.* at 4.
[25] *Id.*
[26] Mosaic Letter.
[27] *Id.*
[28] ICI Letter at 1.
[29] *Id.*
[30] *Id.* at 2.
[31] *Id.*
[32] *See* footnote 8, *supra.*
[33] NYSE Response Letter at 2.
[34] *Id.*
[35] *Id.*
[36] *Id.*

180 days after the date on which final regulations are issued by Treasury.[37]

With regard to establishing a procedure to allow for extensions of the April 24, 2002 compliance date, the NYSE stated that the requirements outlined by proposed NYSE Rule 445 are practical applications of federal law and that it has no authority to grant extensions for compliance with federally mandated deadlines.[38] Similarly, in response to the commenter's suggestion that proposed NYSE Rule 445 grant an exemption from the requirement to adopt an anti-money laundering program for broker-dealers that do not engage in activities traditionally undertaken by registered broker-dealers such as hedge funds, or broker-dealers that engage in stock lending activities with other broker-dealers, agency lenders like banks, and mutual funds, the NYSE again maintains it has no authority to grant such relief from the requirement, as the requirement is mandated by federal law.[39] The NYSE takes the position that each entity subject to anti-money laundering requirements is required to implement policies and procedures that are ''reflective of the type and nature of their business and that exemptions for hedge funds, investment companies, etc. would not be appropriate.''[40]

NASD Regulation's Response to Comments

NASD Regulation submitted a response To comments on April 17, 2002.[41]

In response to the commenters' assertion that certain broker-dealers be exempt from the requirements of proposed NASD Rule 3011, NASD Regulation, like the NYSE, stated that the requirement to establish an anti-money laundering compliance program is a ''mandate of federal law.''[42] While Section 352 requires Treasury to issue regulations by April 24, 2002 that address the applicability of the statutory requirements to different types of financial institutions, it does not allow for the NASD or other self-regulatory organizations to grant exemptions to any types of broker-dealers from the statutory requirements.[43] NASD Regulation suggests that anti-money laundering programs at firms that have no customers and handle no funds will be tailored to focus on ''potential employee misconduct and counterparty awareness.''[44] Similarly, with regard to the ICI's request that an exemption be allowed for an NASD member with respect to its activities as principal underwriter of mutual fund securities where the fund complex being underwritten has established anti-money laundering compliance programs that meet the requirements of Section 352, NASD Regulation reiterates that all broker-dealers are required to enact appropriate compliance procedures.[45] In establishing such programs, NASD Regulation suggests that broker-dealers may coordinate their efforts by taking account of programs and procedures of other firms with which they do business. It also suggests that principal underwriters to mutual funds would be expected to have similarly targeted procedures once the firms had assured themselves that the investment adviser or transfer agent within the fund complex had established and implemented a sufficient anti-money laundering program. NASD Regulation notes that each firm must have its own program designed to detect suspicious activity, and no broker-dealer may rely solely on a program implemented by a firm with which it does business or has a business relationship.[46]

Regarding the SIA's concerns that the proposed rule's requirement to both establish and implement compliance programs by April 24, 2002 is beyond the scope of Section 352, NASD Regulation asserts that its proposed Rule is consistent with Section 352.[47] NASD Regulation states that it does not suggest that all aspects of a firm's anti-money laundering compliance program must be operational by April 24, 2002. Instead, NASD Regulation believes that firms must put in place written procedures, and take ''meaningful steps'' to carry out the procedures to the extent possible by April 24, 2002.[48]

With regard to the SIA's and ICI's requests for clarification that the compliance programs required by April 24, 2002 need only address the Bank Secrecy Act requirements that are in effect by that date, NASD Regulation states that it agrees a member's program must continuously evolve to adapt to new Bank Secrecy Act requirements as they are adopted.[49] Additionally, NASD Regulation believes its proposed new Rule does not require a firm's compliance program to reflect those Bank Secrecy Act requirements that are not in effect by April 24, 2002. NASD Regulation, however, encourages all firms to comply voluntarily with those provisions of the Bank Secrecy Act not yet in effect to the extent practicable, rather than waiting for mandatory compliance deadlines.[50] With respect to the SIA's comment that the broker-dealer SAR reporting requirement is not expected to be in effect until 180 days after Treasury issues final rules, NASD Regulation states that an anti-money laundering program need only achieve compliance with requirements that are in effect. However, NASD Regulation states that broker-dealers should consider filing SARs voluntarily before the effective date of the regulations, and programs must be adapted to provide procedures for reporting suspicious transactions consistent with the final rule once it becomes effective.[51]

Finally, with regard to the SIA's request that the NASD's proposed rule be modified to allow for exemptions from the compliance date under certain circumstances, NASD Regulation notes that the law does not grant NASD Regulation or any other self-regulatory organization the authority to grant exemptions or extensions of time for compliance.[52]

IV. Discussion and Commission Findings

The Commission has reviewed carefully the NASD's and NYSE's proposed rule changes, the comment letters, and the NASD's and NYSE's responses to the comments, and finds, for the reasons set forth below, that the proposals are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a registered national securities association,[53] and a national securities and exchange, and, in particular, with the requirements of Sections 15A(b)(6)[54] and 6(b)(5)[55] of the Act. Section 15A(b)(6) requires the rules of a registered national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the

[37] *Id.* at 3.
[38] *Id.*
[39] *Id.*
[40] *Id.*
[41] *See* footnote 7, *supra.*
[42] *Id.* at 2.
[43] *Id.*
[44] *Id.*
[45] *Id.* at 3.
[46] *Id.*
[47] *Id.*
[48] *Id.*
[49] *Id.* at 4.
[50] *Id.*
[51] *Id.* at 4–5.
[52] *Id.* at 5.
[53] In approving these rules, the Commission has considered their impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).
[54] 15 U.S.C. 78o–3(b)(6).
[55] 15 U.S.C. 78f(b)(5).

mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Section 6(b)(5) imposes the same requirements on a national securities exchange.

The Commission finds that the proposed rule changes are consistent with these Sections of the Act. The Commission finds that the NASD and the NYSE have proposed rules that accurately, reasonably, and efficiently implement the requirements of the PATRIOT Act as it applies to their members. While the Commission acknowledges that the commenters have raised possible burdens these proposed rules place upon certain entities that are required to implement anti-money laundering compliance programs by April 24, 2002, the Commission agrees with NASD Regulation and the NYSE that they have no authority to grant exceptions or exemptions to these federally mandated requirements and deadlines. The Commission believes that NYSE and NASD members that are subject to the requirements of the PATRIOT Act must have written anti-money laundering programs in place by April 24, 2002, and must implement those procedures in a timely fashion. The Commission also recognizes, however, that anti-money laundering compliance programs will evolve over time, and that improvements to these programs are inevitable as members find new ways to combat money laundering and to detect suspicious activities.

With regard to all other issues raised by the commenters, the Commission is satisfied that NASD Regulation and the NYSE have adequately and accurately addressed the commenters' concerns.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[56] that the proposals SR–NASD–2002–24 and SR–NYSE–2002–10 be and hereby are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[57]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–10313 Filed 4–25–02; 8:45 am]

BILLING CODE 8010–01–U

[56] 15 U.S.C. 78s(b)(2).

[57] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45788; File No. SR–NSCC–2002–01]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Making Technical Changes to Its Rules Related to the Timing of Clearing Fund Deposits

April 19, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on January 23, 2002, the National Securities Clearing Corporation (''NSCC'') 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 primarily by NSCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposal.

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 make a technical correction to NSCC Rule 4 relating to the timing of clearing fund deposits.

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

On June 15, 2001, the Commission approved proposed rule change SR–NSCC–2001–04 which modified and consolidated NSCC's clearing fund rules.[3] The purpose of the filing was to: (1) move all NSCC members subject to clearing fund requirements, and not only those member firms that were subject to surveillance status, to risk-based margining and (2) modify the rules to provide that additional clearing fund deposits must be made on the same day requested and within the time frame established by NSCC. The filing stated, in part, that all clearing fund requirements and other deposit requirements shall be made by members within one hour of demand unless otherwise determined by NSCC.[4] At that time, the prior notification requirement found in Section 7 of Rule 4 of NSCC's Rules and Procedures should have been deleted because it is inconsistent with the time frame in that filing. Inadvertently, this deletion was not made. The purpose of this proposed rule change is to delete the inconsistent prior notification provisions of NSCC Rule 4.

The proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to NSCC since the proposed rule change clarifies the clearing fund deposit process and assures the safeguarding of funds within NSCC's custody and control.

(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 relating to the proposed rule change 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 Commission finds 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).[5] Section 17A(b)(3)(F) requires that the rules of a clearing agency be designed to assure the safeguarding of funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission believes that the approval of NSCC's rule change is consistent with this section because it

[1] 15 U.S.C. 78s(b)(1).

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

[3] Securities Exchange Act Release No. 44431 (June 15, 2001), 66 FR 33280.

[4] NSCC Rules and Procedures Procedure XV, II.(B).

[5] 15 U.S.C. 78q–1(b)(3)(F).