

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47139; File No. SR-Amex-2002-109]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the American Stock Exchange LLC Relating to Dow Jones & Company Liability Disclaimer

January 8, 2003.

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 December 18, 2002, the American Stock Exchange LLC ("Amex" 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 Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Rule 902 to include the Dow Jones & Company, Inc. in the disclaimer provisions of the Rule. The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

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 Exchange 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 III below. The Exchange 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

Dow Jones & Company, Inc. compiles, calculates and maintains stock indexes in which it owns "intellectual property" rights such as trademark, copyright, and

proprietary rights. As a condition of a license agreement between the Exchange and Dow Jones & Company, Inc. in connection with the trading of options on certain exchange traded funds, the Amex is required to adopt, and maintain as part of its rules, a disclaimer, limiting the liability of Dow Jones with respect to the dissemination and calculation of its indexes. During the last couple of years, Dow Jones has entered into license agreements with State Street Bank and Trust Company ("SSGA"), and Barclays Global Investors, NA ("BGI") to use its intellectual property rights in various indexes in connection with the issuance, marketing and promotion of certain exchange-traded open-end funds (the "SSGA ETFs" and the "BGI ETFs"). The Exchange is now entering into a license agreement with Dow Jones to use the same indexes to trade Options Clearing Corporation issued options on the SSGA ETFs and the BGI ETFs.

The proposed disclaimer is similar in content to disclaimers currently in place for Standard & Poors Corporation and Morgan Stanley & Co., Incorporated in connection with other ETFs and index options. The proposed disclaimer states that Dow Jones does not guarantee the accuracy or completeness of its indexes, makes no express or implied warranties with respect to the indexes and shall have no liability for damages, claims, losses or expenses caused by errors in calculating or disseminating the indexes.

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act³ in general and furthers the objectives of section 6(b)(5)⁴ in particular in that it is 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 facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

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.

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

No written comments were solicited or received with respect to the proposed rule change.

III. 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 Amex. All submissions should refer to File No. SR-Amex-2002-109 and should be submitted by February 5, 2003.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

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 exchange⁵ and, in particular, the requirements of section 6 of the Act.⁶ The proposed liability disclaimer provision is similar to other liability disclaimers, including one related to portfolio depository receipts in Amex Rule 1004 and others related to index options in Amex Rule 902C.

The Amex has requested that the proposed rule change be given accelerated approval pursuant to the section 19(b)(2) of the Act.⁷ Since the proposed liability disclaimer is substantially similar to other liability disclaimers, the proposed disclaimer

⁵ In approving this proposed rule change, the Commission notes that it has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁶ 15 U.S.C. 78s.

⁷ 15 U.S.C. 78s(b)(2).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b).

⁴ 15 U.S.C. 78s(b)(5).

raises no new regulatory issues. Accordingly, the Commission finds good cause, consistent with section 19(b)(2) of the Act,⁸ to approve the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁹ that the proposed rule change (SR-Amex-2002-109) be, and hereby is, approved.

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

J. Lynn Taylor,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47132; File No. SR-NSCC-2002-08]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Granting Accelerated Approval of a Proposed Rule Change Relating to New Clearing Fund Valuation of Deposited Securities

January 7, 2003.

On October 3, 2002, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ a proposed rule change (File No. NSCC-2002-08). Notice of the proposal was published in the **Federal Register** on December 16, 2002.² On January 6, 2003, NSCC amended its proposed rule change.³ No comment letters were received.⁴ For the reasons discussed below, the Commission is approving the proposed rule change on an accelerated basis.

I. Description

The proposed rule change will modify Rule 4 (Clearing Fund) and Procedure

⁸ *Id.*

⁹ *Id.*

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 46958 (Dec. 6, 2002), 67 FR 77123.

³ The purpose of this amendment was to conform the language of this rule filing to an earlier NSCC proposed rule change that the Commission has approved. Securities Exchange Act Release No. 46931 (Nov. 27, 2002), 67 FR 72714 (Dec. 6, 2002) [File No. SR-NSCC-2002-05]. Because this amendment is technical in nature, republication of notice is not required.

⁴ This proposed rule change had a fifteen-day comment period.

XV (Clearing Fund Formula and Other Matters) of NSCC's Rules and Procedures to establish haircuts for securities posted by NSCC members as clearing fund collateral. Under Rule 4, NSCC members are required to make deposits to NSCC's clearing fund.⁵ Rule 4 also states that NSCC, at its discretion, may permit part of a member's (with the exception of "mutual fund/insurance services members") clearing fund deposit to be evidenced by an open account indebtedness secured by (a) unmatured bearer bonds that are either direct obligations of or obligations guaranteed as to principal and interest by the United States or its agencies ("qualifying bonds") and/or (b) one or more irrevocable letters of credit under certain guidelines established within NSCC's rules.⁶

In its efforts to ensure that it has adequate collateral to cover its members' obligations, NSCC has decided to haircut the value of securities deposited to meet clearing fund requirements. The proposed haircut percentages will range from 2% to 5% and will be based on the type of security deposited, its market risk, and years to maturity.⁷ The proposed haircuts are similar to those currently applied by The Depository Trust Company as a part of its risk management controls. These percentages may change from time to time. Should NSCC decide to change the haircut schedule, it will communicate such changes to its participants.

NSCC intends to implement this change no sooner than thirty days after the Commission's approval of this proposed rule filing provided, however, that NSCC would like to make this change effective concurrent with the changes made pursuant to proposed rule change File No. SR-NSCC-2002-05.⁸

⁵ The amount of each member's required deposit is determined by NSCC in accordance with one or more formulas.

⁶ The Commission recently approved a NSCC proposed rule change (File No. SR-NSCC-2002-05) that increased the minimum amount of cash that must be deposited by members (with the exception of "mutual fund/insurance services members") to satisfy clearing fund requirements and that limited the amount of a deposit that may be collateralized with letters of credit. Securities Exchange Act Release Nos. 46931 (Nov. 27, 2002) and 46389 (Aug. 21, 2002), 67 FR 55053 (Aug. 27, 2002).

⁷ NSCC's proposed haircut schedule for U.S. Treasury and agency securities is: Interest bearing with remaining terms to maturity of up to 10 years—2%; Interest bearing with remaining terms to maturity in excess of 10 years—5%; Zero coupon with remaining terms to maturity of up to 5 years—2%; Zero coupon with remaining terms to maturity in excess of 5 years—5%.

⁸ *Supra* note 5.

II. Discussion

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)(A)⁹ of the Act, which requires that the rules of a clearing agency be designed to safeguard securities and funds in its custody or control or for which it is responsible. The Commission finds that by providing a cushion to protect against downward fluctuations in the value of securities pledged as clearing fund collateral, the proposed rule change is consistent with this obligation because it will help to ensure that NSCC has adequate clearing fund assets in the event that NSCC must liquidate the collateral of an insolvent participant.

NSCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing so that it can give its participants thirty days after approval of this filing to become compliant with the changes being made and can implement the changes to the clearing fund requirements concurrently with the changes made by SR-NSCC-2002-05.¹⁰ The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing because such approval will allow NSCC to give its participants thirty days to implement the changes and to implement the changes concurrently with those made by SR-NSCC-2002-05.

III. 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 the requirements of 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-2002-08) be, and hereby is, approved.

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

J. Lynn Taylor,

Assistant Secretary.

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⁹ 15 U.S.C. 78q-1(b)(3)(A).

¹⁰ *Supra* note 5.

¹¹ 17 CFR 200.30-3(a)(12).