

would be consistent with the treatment of exchange-traded options under the penny stock rules.⁷ Both exchange-traded options and security futures products are subject to special disclosure requirements.⁸ Subjecting security futures to the additional disclosure regime of the penny stock rules, therefore, would likely be duplicative and unnecessarily burdensome.

Security futures commenced trading in the United States on November 8, 2002 on the Nasdaq-Liffe and OneChicago markets.⁹ Therefore, the Commission, through this order, is providing an exemption from the penny stock rules for security futures such time as the Commission takes any further action on the proposed amendment to Rule 3a51-1 outlined above. This exemption will allow the Commission to receive and consider comments while, at the same time, temporarily excluding security futures products from the penny stock rules.

Because security futures are subject to an alternative regulatory scheme, and because the CFMA directs the Commission to issue such rules, regulations, or orders as are necessary to avoid duplicative or conflicting regulations for firms that are "fully registered" with both the Commodity Futures Trading Commission and the Commission,¹⁰ the Commission finds that it is appropriate in the public interest and consistent with the protection of investors to provide this temporary exemptive relief.

Accordingly, pursuant to Section 36(a)(1) of the Exchange Act,¹¹

It is hereby ordered that security futures products are exempted from the definition of penny stock set forth in Exchange Act Section 3(a)(51)(A) and

national securities exchange or a national securities association registered pursuant to section 15A(a), 15 U.S.C. 78f(h)(1).

⁷ In particular, the term "penny stock" currently does not include any put or call option issued by the Options Clearing Corporation ("OCC"). See 17 CFR 240.3a51-1(c).

⁸ Exchange Act Rel. No. 30608 (April 20, 1992) at n. 39, 57 FR 18004 (April 28, 1992) ("In addition, because put and call options issued by the OCC are already subject to special disclosure requirements, they are separately excluded from the definition of penny stock in paragraph (c) of Rule 3a51-1."). See also 17 CFR 240.9b-1; CBOE Rules 9.1-9.23; NASD Rule 2860 (16).

⁹ Peter A. McKay, *Single Stocks Futures Arrive in the U.S. With Room to Grow*, Wall Street Journal, Nov. 11, 2002, at B6.

¹⁰ See Exchange Act Section 15(c)(3)(B), 15 U.S.C. 78o(c)(3)(B) (directing the Commission to avoid duplicative or conflicting rules relating to the treatment of customer funds, securities, or property, maintenance of books and records, financial reporting, or other financial responsibility rules, involving security futures).

¹¹ 15 U.S.C. 78mm(a)(1).

Rule 3a51-1 until such time as the Commission takes any further action on the proposed amendment to Rule 3a51-1.

By the Commission.

J. Lynn Taylor,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49051; File No. SR-NSCC-2003-15]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change to Implement Real-Time Trade Matching for Fixed Income Securities

January 12, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on June 27, 2003, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change 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 parties.

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

NSCC is seeking to implement a real-time trade matching system ("RTTM") for certain NSCC-eligible corporate bonds, municipal bonds, and unit investment trusts ("NSCC debt securities").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 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 these statements.³

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

RTTM was implemented in the fourth quarter of 2000 by the former Government Securities Clearing Corporation ("GSCC"),⁴ an NSCC affiliate, for the processing of government securities transactions.⁵ It was designed with a vision to use the platform for other fixed income securities. Accordingly, it was implemented in 2002 for mortgage-backed securities transactions processed by the former MBSCC.⁶ The purpose of the proposed rule change is to implement RTTM for NSCC debt securities. RTTM will eventually replace NSCC's current Fixed Income Transactions System ("FITS").⁷

The two areas of NSCC debt securities processing rules that require changes to implement RTTM are (1) inbound submissions to NSCC and (2) NSCC's reporting of information related to such submissions to participants. Specifically, interactive messages and the RTTM Web User Interface ("RTTM Web")⁸ will be added as ways in which participants can submit trade data and subsequent related trade processing instructions.⁹ With respect to output issued by NSCC, initially upon implementation, end-of-day reports will continue to be produced by FITS

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

⁴ On January 1, 2003, MBS Clearing Corporation ("MBSCC") was merged into GSCC and GSCC was renamed the Fixed Income Clearing Corporation ("FICC"). The functions previously performed by GSCC are now performed by the Government Securities Division ("GSD") of FICC, and the functions previously performed by MBSCC are now performed by the Mortgage-Backed Securities Division ("MBSD") of FICC. Securities Exchange Act Release No. 47015 (December 17, 2002), 67 FR 78531 (File Nos. SR-GSCC-2002-09 and SR-MBSCC-2002-01).

⁵ Securities Exchange Act Release No. 44946 (October 17, 2001), 66 FR 53816 (File No. SR-GSCC-2001-01).

⁶ Securities Exchange Act Release No. 45563 (March 14, 2002), 67 FR 13389 (File No. SR-MBSCC-2001-02).

⁷ In March 2003, the Commission approved certain modifications to FITS in order to prepare NSCC participants for the new RTTM functionality. Securities Exchange Act Release No. 47494 (March 13, 2003), 68 FR 13975 (File No. SR-NSCC-2003-10).

⁸ The RTTM Web will replace NSCC's PC Web application for NSCC fixed income securities.

RTTM will be implemented in phases in 2004. Participants will be notified of specific implementation dates by Important Notice. Conversation with Nikki Poulos, Vice President and Associate General Counsel, FICC (January 9, 2004).

⁹ Initially, RTTM will support the current batch method of data input.

¹ 15 U.S.C. 78s(b)(1).

² The proposed rule change does not apply to debt securities transactions that are submitted to NSCC via its correspondent clearing service, by regional exchanges/marketplaces, or through qualified securities depositories as defined in NSCC's rules because such transactions will not be processed by RTTM.

whereas intraday reports will be produced by RTTM. In addition, NSCC will make output available for interactive message users and RTTM Web users in those respective media.

The following is a summary of the key proposed rule changes needed to implement RTTM:

- References to "Contract Lists" will be replaced with references to "output" or to "information made available" by NSCC to cover the additional types of output that could be generated by RTTM.

- References to the names of specific instructions that participants may submit to resolve uncompleted trades (e.g., "Delete of Original Trade Input") will be replaced with general references to "appropriate instructions" to include similar instructions which have different names that may be submitted by interactive message users and RTTM Web users.¹⁰

- With respect to trades submitted for two-sided comparison processing, interactive message users and RTTM Web users will be able to modify their trades, subject to the timeframes and requirements imposed by NSCC from time to time, and will also be able to remove an unmatched trade from processing by sending an instruction indicating that they do not agree with the terms of a trade that has been submitted against them.¹¹ Locked-in trade sources and syndicate managers that are interactive message users or RTTM Web users will also be able to modify their trade submissions.

- RTTM will accept cash and next-day transactions for comparison-only processing.

- RTTM will add an intraday money tolerance pursuant to which NSCC will compare a trade using the seller's contract amount if the contract amounts submitted by the buyer and seller are within a net \$2 difference for trades of \$1 million or less or \$2 per million for trades greater than \$1 million.¹² In addition, RTTM will compare a trade if trade data matches in all respects,

including contract amounts which have been compared pursuant to the money tolerances, except for trade date. In this case, the earlier of the two trade dates submitted will be used. RTTM will not use the summarization process used to compare trades currently set forth in NSCC procedure II, section D.1(e).

- NSCC's rules and procedures will continue to provide that the submission of a locked-in trade or a syndicate takedown trade results in a compared trade. However, RTTM will provide members on behalf of whom locked-in and syndicate takedown trades are submitted ("LI/ST contrasides") the option of submitting matching trade details for their internal reconciliation purposes. In order to facilitate the participants' internal reconciliation process, RTTM has been designed to issue output that indicates a status of "unmatched" or "match request" upon receipt of a locked-in or syndicate takedown trade. Notwithstanding the output indicating unmatched and match request, the proposed rule changes make clear that the submission of matching trade data by LI/ST contrasides will have no legal effect on the status of locked-in and syndicate takedown trades as compared trades. In addition, notwithstanding that output is made available by NSCC as a result of subsequent processing information submitted by LI/ST contrasides that are not specifically provided for in NSCC's rules and procedures, the proposed rule changes make clear that such submissions will have no legal effect and that RTTM has been designed to accept such submissions for participants' internal reconciliation purposes only.

In addition to the above, NSCC is proposing the following additional technical changes and corrections:

- References to the "Automated Bond System" ("ABS") will be deleted because ABS trades submitted by the New York Stock Exchange are locked-in trades and are covered by provisions dealing with locked-in trades. In addition, references to the "AMEX Order File System" will be deleted because that system is no longer operational.

- Technical corrections will be made throughout the debt when-issued section of NSCC's procedure II, section E to clarify the submission requirements for a transaction to be treated as a when-issued transaction. It should be noted that due to the systems development schedule, RTTM will not be available with respect to when-issued corporate debt securities transactions upon implementation. NSCC will file a rule change pursuant to section 19(b)(3) of

the Act and will notify members when the service becomes available for these transactions.

- Technical corrections will be made to the use of the term "settlement date" so that when referenced with upper case letters it means the settlement date as established by NSCC.¹³

NSCC believes that the proposed rule change is consistent with the requirements of section 17A of the Act¹⁴ and the rules and regulations thereunder applicable to NSCC because it should permit the accurate clearance and settlement of securities by enabling NSCC to process fixed income trades more efficiently.

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

NSCC does not believe that the proposed rule changes 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 changes 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

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, 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.,

¹⁰ For example, in the current version of NSCC's procedures there is a reference to an instruction called a "Delete of Original Trade Input" that is used by batch participants to delete uncompleted trade data they have submitted. Interactive message users and RTTM Web users will use an instruction called a "Cancel" to accomplish the same result. Therefore, references to "Delete of Original Trade Input" will be replaced by references to "appropriate instruction" in order to cover the equivalent interactive message and RTTM Web instruction.

¹¹ RTTM Web users will also be able to subsequently restore a trade to processing by submitting the requisite instruction.

¹² No changes are being proposed to NSCC's existing end-of-day money tolerance currently contained in procedure II, section D.1(a).

¹³ For example, if a trade is made on September 15 with a contract settlement date of September 18, but the trade does not match until September 18 or later, NSCC will provide the Settlement Date.

¹⁴ 15 U.S.C. 78q-1.

Washington, DC 20549-0609. Comments may also be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR-NSCC-2003-15. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NSCC and on NSCC's Web site at www.nsc.com/legal/.

All submissions should refer to File No. SR-NSCC-2003-15 and should be submitted by February 6, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹⁵

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49061; File No. SR-NSCC-2003-03]

Self-Regulatory Organizations; The National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Execution Time for CNS Buy-Ins

January 12, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on March 24, 2003, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") and on March 14, 2003, amended 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 parties.

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

The proposed rule change would allow NSCC to amend Procedures VII and X to allow NSCC to determine the timeframe for the execution of continuous net settlement ("CNS") buy-ins from time to time.

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 these statements.²

(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 Procedures VII.J. "CNS Accounting Operation, Recording of CNS Buy-Ins" and X.A.1. "Execution of Buy-Ins, CNS System, Equity Securities and Corporate Debt Securities" with regard to the execution time of CNS buy-ins.

Except with respect to securities subject to a voluntary corporate reorganization, a member having a long CNS position at the end of any day may submit to NSCC a notice of intention to buy-in ("buy-in notice") specifying a quantity of securities (not exceeding such long CNS positions) the member intends to buy-in ("buy-in position"). The day the CNS buy-in notice is submitted is referred to as N, and N+1 and N+2 refer to the succeeding days. Each day commences in the evening and includes both an evening and daytime allocation. The CNS buy-in position is given high priority for allocation through N+2.

Pursuant to NSCC Procedure VII, if a CNS buy-in position is not satisfied at the end of the day cycle on N+2, the CNS buy-in may be executed. In effect, members have from the completion of the day cycle on N+2 to the close of the markets to execute the CNS buy-in.

Operationally, as the day cycle generally completes at 3:10 p.m. eastern standard time ("EST"), participants face a narrow timeframe within which they may execute CNS buy-ins. In the event that settlement and recycle times are extended or delayed, that window of time is further reduced.

At the request of participants and after consultation with the Securities Industry Association Buy-In Committee, NSCC proposes to modify Procedures VII and X to permit the execution of CNS buy-ins if by 3 p.m. EST or such earlier time as established by NSCC with five business days notice because of market events (e.g., days the marketplaces close early). NSCC will advise participants of any earlier execution time via important notice five business days in advance of its effectiveness. This change in time is not intended to be a requirement for executions, but is to serve as an opportunity for participants to execute CNS buy-ins in a more efficient manner.

NSCC believes that the proposed rule change is consistent with Section 17A of the Act³ and the rules and regulations thereunder because it will facilitate the prompt and accurate clearance and settlement of securities transactions by providing members sufficient time to execute CNS buy-ins.

(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 it receives.

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

¹⁵ 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 NSCC.

³ 15 U.S.C. 78q-1.