site review (''OSR'') conducted by Nasdaq staff. The purpose of both the accountant certification and the OSR is to provide Nasdaq with independent confirmation of Nasdaq data consumption. Nasdaq proposes to eliminate the certified-list requirement and OSR alternative, and thus their attendant costs, and replace them with the annual scaled administrative fees proposed in this filing.[4] Nasdaq will retain the right to demand a certified usage report, paid for by the distributor or vendor, in cases involving discrepancies in distributor or vendor reporting.[5]

Nasdaq believes that a scaled, annual administrative fee will more closely align data usage monitoring costs with Nasdaq expenditures. In addition, the new structure, will allow Nasdaq staff to directly and uniformly apply its expertise in data usage monitoring as well as provide a more efficient means of fee collection than its current practices. Moreover, a scaled fee based on the scope of a distributor or vendor's dissemination of Nasdaq data will also permit those date distributors or vendors to estimate their costs more effectively. Once the proposed administrative fee is approved, Nasdaq will suspend indefinitely its costly and burdensome annual certification requirement and instead use the new administrative fee revenue to conduct Nasdaq-initiated OSRs, manage distributor applications, monitor vendor services, and perform other compliance activities.

Finally, Nasdaq notes that its proposed fee structure is priced at levels similar to its current OSR fees which, being consistently less expensive than the cost of obtaining an independent verification of data usage from a certified public accountant, are used by the majority of Nasdq realtime market data distributors or vendors. As such Nasdaq believes its proposal will not result in a material increase in overall monitoring fee burdens on most Nasdaq data distributors or vendors.[6]

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act which requires that the rules of the NASD provide for the equitable allocations of reasonable, dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls.

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

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act.

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

Written comments were neither solicited nor received.

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

Within 35 days of the 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 NASD 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. 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 NASD. All submissions should refer to the file number in the caption above and should be submitted by June 24, 1998.

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

Margaret H. McFarland,

Deputy Secretary.

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[4] Distributors using per-quote and usage based reporting will have their monitoring fees determined by having their monthly payment totals divided by the professional subscriber fee rate, resulting in a terminal equivalent. For example, a distributor or vendor that is being charged $1,000 a month for its per-quote usage of Nasdaq Level 1 Service will have that $1,000 fee divided by the existing $20 monthly Level 1 per-terminal fee which results in a terminal equivalent of 50 with an annual monitoring fee of $500.

For 1998 billing purposes only, Nasdaq will not impose these administrative fees on any firm that incurs costs and submits a certified usage report in 1998 prior to the effective date of Nasdaq's new fee schedule. *See* Amendment No 2, *supra* note 1.

[5] Similarly, the submission of an unrequested, accountant-certified usage list will not preclude Nasdaq from conducting its own OSR nor will it exempt a distributor or vendor from payment of the administrative fee.

[6] Nasdaq notes that it does not currently require delayed distributors to meet audit requirements or pay an OSR fee. Nasdaq believes that the imposition of new minimal charges on delayed distributors is justified to reimburses Nasdaq for the cost of application processing and product monitoring. Nasdaq also advises that those vendors who receive both delayed and real-time data, will not be billed separately for each type of data but will only pay for the highest level of service received. This practice will continue for Nasdaq's proposed administrative fees as well. *See* Amendment No. 1, *supra* note 1.

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40034; File No. SR–NSCC–98–3)

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Order Granting Temporary Accelerated Approval of a Proposed Rule Change That Establishes Additional Procedures for Class A Surveillance of Certain Settling Members and Permits the Collection of Clearing Fund and Other Collateral Deposits From These Settling Members

May 27, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on April 23, 1998, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–NSCC–98–3) 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 extend on an accelerated basis temporary approval of the proposed rule change through May 31, 1998.

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

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

The proposed rule change seeks to extend the temporary approval of additional procedures which govern the placement of NSCC members on Class A surveillance and the clearing fund deposit and other collateral requirements for such members.

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

NSCC seeks to extend the temporary approval of a rule change governing the application of Class A surveillance procedures and the additional collateralization requirements to settling members that engage in certain over-the-counter (''OTC'') market making activities.[3] To decrease the risks associated with OTC market makers, NSCC has added Addendum O to its rules and procedures. Addendum O permits NSCC to place settling members on Class A surveillance under certain conditions.

NSCC has also adopted an interim collateralization policy which permits NSCC in its discretion to require settling members that clear for or are themselves OTC market makers and that are placed on Class A surveillance to deposit special collateral in amounts based upon the settling member's OTC activities relative to its amount of excess net capital.[4]

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A(b)(3)(F)[5] of the Act and the rules and regulations thereunder because the surveillance procedures and additional collateralization will facilitate the prompt and accurate clearance and settlement of securities transactions and, in general, will protect investors and the public interest.

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

NSCC does not believe that the proposed rule change will impact 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

Section 17A(b)(3)(F)[6] of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency and generally to protect investors and the public interest. As the Commission previously stated, it believes that the proposed rule change is consistent with NSCC's obligations under the Act because it will help NSCC protect itself, its members, and investors from members that pose an increased risk because of their involvement in OTC market making. *Supra*, note 3.

Under the proposal, NSCC will continue to have the authority with respect to settling members which participate in OTC market making activities or clear for correspondents that engage in such activity (1) to place such members on Class A surveillance, (2) to require such members to post additional collateral with NSCC, and (3) to calculate an alternative clearing fund requirement for such members when additional risk factors are present. Collectively, the higher level of surveillance, the additional level of collateralization, and the alternative clearing fund requirements should help ameliorate NSCC's exposure which in turn should assist NSCC in fulfilling its obligations under the Act to safeguard securities and funds for which it has control of or is responsible for and to protect investors and the public interest.[7]

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 accelerated approval will allow NSCC to continue to utilize its Class A surveillance procedures, the interim collateralization policy, and the alternative clearing fund formula without interruption until it makes a filing requesting permanent approval of the rule change, and therefore will allow NSCC to continue to protect itself and its participants from the potential risks of OTC market making activities.

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, 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 in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 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–98–3 and should be submitted by June 24, 1998.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–98–3) be, and hereby is, approved through May 31, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

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

[3] For a complete discussion of NSCC's Class A surveillance procedures and collateralization requirements, refer to Securities Exchange Act Release Nos. 37202 (May 10, 1996), 61 FR 24993 [File No. SR–NSCC–95–17] (temporary approval of proposed rule change) and 38622 (May 19, 1997), 62 FR 27285 [File No. SR–NSCC–97–04] (temporary approval of proposed rule change).

[4] The temporary rule change also grants NSCC the discretion to compute the continuous net settlement component of the clearing fund requirements for any settling member on Class A surveillance according to an alternative formula based upon close-out risk.

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] Id.

[7] As noted in the May 1996 approval order, prior to filing a proposed rule change seeking permanent approval of the procedures set forth in this temporary approval order, NSCC shall present to the Commission a more detailed report on its findings regarding the adequacy of the controls and discussing any changes to be made to the procedures.

[8] 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,
Deputy Secretary.
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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40036; File No. SR–NYSE–98–13]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to Proposed Rule Change by the New York Stock Exchange, Inc., Relating to the Trading of Bonds

May 28, 1998.

I. Introduction

On April 15, 1998, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), 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 amend its rules and procedures governing the trading of bonds. The proposed rule change was published for comment in the **Federal Register** on April 28, 1998.[3] No comments were received regarding the proposal. On April 30, 1998, the NYSE filed Amendment No. 1 to the proposed rule change.[4] This order approves the proposed rule change. In addition, the Commission is publishing this notice to solicit comments on Amendment No. 1 to the proposed rule change and is simultaneously approving Amendment No. 1 on an accelerated basis.

II. Description of the Proposal

The NYSE proposes to amend its rules and procedures governing the trading of bonds. The Exchange seeks to delete obsolete provisions of its bond trading rules, to streamline those rules, and to consolidate the bond trading rules in a new Exchange Rule 86. In addition, the proposal would amend Exchange Rule 13, Exchange Rule 61, Exchange Rule 70, Exchange Rule 72, Exchange Rule 76, Exchange Rule 79A, and Exchange Rule 85.

The Exchange currently trades non-convertible bonds in its Automated Bond System (''ABS'') and convertible bonds on its bond floor. Later this year, the Exchange intends to move all bond trading into the ABS.[5] Currently, various Exchange rules govern the trading of bonds, particularly Rule 85, governing the trading of ''cabinet'' securities. The proposed rule change provides for uniform bond trading procedures and consolidates those procedures in new Rule 86.[6] The rule change: (i) incorporates into new Rule 86 the same price/time priority matching procedures as Rule 85; (ii) establishes appropriate cross references to new Rule 86 in other NYSE rules; and (iii) eliminates the rules governing trading on the bond floor, which will no longer be necessary.

The proposed rule change also alters the procedure for the crossing of bonds. Currently, Rule 85 requires that a member hold a proposed cross for a ''reasonable'' period of time before effecting the cross, and that the member announce the intention to effect the cross on the bond floor. For the purposes of the ABS, the Exchange has interpreted this as requiring a member to display a proposed cross in the ABS for two minutes prior to effecting the trade. Based on its experience, the Exchange represents that these crossing procedures are no longer necessary.

Another change to the bond trading rules moves the rules governing transactions at wide variations from Rule 79A.40 to new Rule 86(g). For non-convertible bonds, the Exchange would retain the requirement that a Floor Official approve all sales made two points away from the last sale or more than 30 days after the last transaction. The Exchange would not apply this requirement in all instances to convertible bonds, noting such bonds generally are priced in relation to the underlying equity security. However, new Rule 86(g) allows a Floor Governor to impose the same requirement on the trading of convertible bonds if market conditions warrant.

Finally, Amendment No. 1 to the proposed rule change corrects typographical errors in the original submission.[7]

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirement of Section 6 of the Act. In particular, the Commission believes the proposal is consistent with Section 6(b)(5) of the Act.[8] Section 6(b)(5) requires, among other things, that the rules of the Exchange ''foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities'' and ''protect investors and the public interest.''

The proposed rule change is part of a large effort to move bond trading from the bond floor, where trading activity has declined, to the ABS which should allow for the more economic and efficient trading of bonds.[9] Moreover, by consolidating bond trading procedures in a new Rule 86 and more clearly defining aspects of the ABS in that rule, bond trading at the Exchange should become more transparent for investors and market participants.

As for the proposed changes to the crossing procedures under the ABS, the Commission is satisfied that safeguards will prevent crosses from occurring in the ABS, under new Rule 86, at quotes outside of the spread reflecting the best bid and best offer in the ABS. The ABS will not allow for trading below and above the highest bid and lowest offer prices in the ABS without first completing orders at better prices.[10] And although new Rule 86 will no longer require that a member hold a proposed bond cross for a ''reasonable'' period of time before effecting that cross, the Commission accepts that the infrequency and small size of crosses for bonds,—a distinct type of security traded at the Exchange,—makes this permissible. The Commission also notes the character of bond crosses on the Exchange, with most crosses involving bond brokers receiving matching buy and sell orders from two different

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

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 39903 (April 22, 1998), 63 FR 23324.

[4] In Amendment No. 1, the Exchange corrected typographical errors in the proposed rule change. *See* Letter from James E. Buck, Senior Vice President and Secretary, Exchange, to Michael Walinskas, Deputy Associate Director, Division of Market Regulation, Commission, dated April 29, 1998 (''Amendment No. 1'').

[5] On March 13, 1998, the Exchange submitted a proposed rule change, which became effective immediately upon filing pursuant to Section 19(b)(3)(A) of the Act, that interpreted Exchange Rule 85 to make convertible bonds eligible for trading in the ABS. *See* Securities Exchange Act Release No. 39808 (March 26, 1998), 63 FR 15908 (April 1, 1998).

[6] New Rule 86 specifies that these bond trading procedures apply only to bonds ''traded through ABS.'' The Exchange trades certain bonds, such as equity-linked securities, on its stock floor. These securities are traded pursuant to NYSE equity-trading procedures and are not subject to Rule 86. *See* Securities Exchange Act Release No. 32650 (July 16, 1993), 58 FR 39586 (July 23, 1993).

[7] *See* Amendment No. 1.

[8] 15 U.S.C. 78f(b)(5). In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] *See supra* Note 5.

[10] *See* Letter from Fred Siesel, Director, Fixed Income Markets, Exchange, to Kenneth M. Rosen, Attorney, Division of Market Regulation, Commission, dated May 21, 1998.