available for inspection and copying at the principal office of the Exchange. All submissions should refer to the File No. SR–ISE–2001–11 and should be submitted by June 19, 2001.

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 exchange, and in particular, with the requirements of Section 6(b)(5).[14] The Commission notes that it has previously approved similar listing standards proposed by the Amex, CBOE, and PCX for options on trust issued receipts, and it believes that the ISE's proposal contains adequate safeguards, matching those previously approved.[15] As the Commission found in its previous approvals of the listing standards proposed by the other exchanges, the listing and trading of options should give investors a better means to hedge their positions in the underlying trust issued receipts. The Commission also believes that pricing of the underlying trust issued receipts may become more efficient, and market makers in these shares, by virtue of enhanced hedging opportunities, may be able to provide deeper and more liquid markets. In sum, the Commission believes that options on trust issued receipts likely will engender the same benefits to investors and the marketplace that exist with respect to options on common stock, thereby serving to promote the public interest, to remove impediments to a free and open securities market, and to promote efficiency, competition, and capital formation.[16]

The Commission finds that the Exchange's listing and delisting criteria for options on trust issued receipts are adequate. The proposed listing and maintenance requirements should ensure that there exist adequate supplies of the underlying trust issued receipts in case of the exercise of an option, and a minimum level of liquidity to control against manipulation and to allow for the maintenance of fair and orderly markets. The ISE's additional requirements for opening additional series of options on HOLDRs will also ensure that the underlying securities are options eligible, and for the most part will satisfy minimum thresholds previously approved by the Commission.

The Commission also believes that the surveillance standards developed by the ISE for options on trust issued receipts are adequate to address the concerns associated with the listing and trading of such securities. The ISE's proposal to limit the weight of the portfolio that may be composed of ADRs whose primary markets are in countries that are not subject to comprehensive surveillance agreements is similar to that previously approved by the Commission.[17] As to domestically traded trust issued receipts themselves and the domestic stocks in the underlying portfolio, the Intermarket Surveillance Group (''ISG'') Agreement will be applicable to the trading of options on trust issued receipts.[18]

Finally, the Commission believes that the ISE's proposed margin requirements, which mirror those of the CBOE, are appropriate.[19] The Commission notes that they are comparable to margin requirements that currently apply to broad-based and narrow-based index options, and to those previously approved for use at the Amex, CBOE, and PCX.[20]

The Commission finds good cause for approving the proposed rule change (SR–ISE–2001–11) prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register** under Section 19(b)(2) of the Act.[21] As noted above, the trading requirement for options on trust issued receipts at the ISE will be substantially similar to those at the Amex, CBOE, and PCX, which the Commission has approved.[22] The Commission does not believe that the proposed rule change raises novel regulatory issues that were not already addressed and should benefit holders of trust issued receipts by permitting them to use options to manage the risks of their positions in the receipts. Accordingly, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act,[23] to approve the proposal on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[24] that the proposed rule change (SR–ISE–2001–11) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

Margaret H. McFarland,

Deputy Secretary.

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[14] 15 U.S.C. 78f(b)(5).

[15] *See supra* note 5.

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

[17] *See supra* note 5.

[18] ISG was formed on July 14, 1983, to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets.

[19] *See supra* note 5.

[20] The Commission also notes that the ISE will file a proposed rule change to amend its margin rules, if necessary. *See* Amendment No. 1, *supra* note 3.

[21] 15 U.S.C. 78s(b)(2).

[22] *See supra* note 5.

[23] 15 U.S.C. 78f(b)(5).

[24] 15 U.S.C. 78s(b)(2).

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44332; File No. SR–NASD–00–77]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Registration Requirements for Limited Principals-Financial and Operations and Limited Principals-Introducing Broker/Dealer Financial and Operations

May 21, 2001.

I. Introduction

On December 20, 2000, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, NASD Regulation, Inc. (''NASD Regulation'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder.[2] The proposal amends NASD Rule 1022(b), ''Limited Principal—Financial and Operations'' (''FINOP''), NASD Rule 1022(c), ''Limited Principal—Introduction Broker/Dealer Financial and Operations'' (''Introducing FINOP''), and NASD Rule 9610, ''Procedures for Exemptions.'' Notice of the proposed rule change was published for comment in the **Federal Register** on February 9, 2001.[3] The Commission received one comment letter regarding the proposal.[4] This order approves the proposed rule change.

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 43928 (February 5, 2001), 66 FR 9737.

[4] *See* letter to the Secretary, SEC, from the Ad Hoc Committee for Small Firm Financial and Operational Responsibility (''Ad Hoc Committee''), dated March 2, 2001 (''Ad Hoc Committee Letter'').

II. Description of the Proposed Rule Change

NASD Rules 1022(b) and 1022(c) set forth registration requirements for FINOPs and Introducing FINOPs. NASD Regulation proposes to amend NASD Rules 1022(b) and 1022(c) to clarify their applicability to NASD members by making citations in them consistent with Rule 15c3–1 under the Exchange Act.[5] Specifically, the proposed amendments to NASD Rule 1022(b) clarify that every broker or dealer operating pursuant to Exchange Act Rule 15c3–1(a)(1)(ii) or (a)(2)(i)[6] (both of which subject brokers or dealers to a minimum net capital requirement of $250,000), or Exchange Act Rule 15c3–1(a)(8)[7] (which subjects municipal securities brokers' brokers to a minimum $150,000 net capital requirement) must have a FINOP. The proposed amendments to NASD Rule 1022(c) clarify that all other brokers or dealers subject to Exchange Act Rule 15c3–1 must have at least one associated person registered as an Introducing FINOP.

FINOPs must pass the Series 27 Principal Examination and Introducing FINOPs must pass the Series 28 Principal Examination. NASD Rule 1022(c) currently provides that a person qualified as a Series 27 FINOP is not required to take the Series 28 Examination if he or she is employed as an Introducing FINOP. NASD Regulation proposes to make a technical correction to NASD Rule 1022(c)(3) by adding a reference to paragraph (b)(2) of NASD Rule 1022, which defines the term ''Limited Principal—Financial and Operations.''

NASD Regulation also proposed to eliminate the ability of members subject to Exchange Act Rule 15c3–1 to request exemptions from the requirement to have a FINOP by amending NASD Rule 1022(b) and by striking NASD Rule 1022 from the list of rules in NASD Rule 9610(a) from which members may seek exemptive relief. Although firms subject to Exchange Act Rule 15c3–1 will be required to have a FINOP, they may continue to seek exam waivers for qualified individuals pursuant to paragraph (e) of NASD Rule 1070, ''Qualification Examination and Waiver of Requirements.''

The proposed changes to NASD Rules 1022(b) and 1022(c) also makes clear that the requirements to have a FINOP or Introducing FINOP applies only to firms that are subject to Exchange Act Rule 15c3–1. Members that are exempt from or otherwise not subject to Exchange Act Rule 15c3–1 will no longer be subject to NASD Rules 1022(b) and 1022(c), and will not need to seek exemptive relief from them.

The proposed changes will not affect individuals who currently are grandfather for the Series 27 or Series 28 Examinations because they are considered to possess the license for which they were grandfathered.[8] In addition, firms that currently are the subject of a FINOP waiver will not be subject to the proposed rule changes.[9]

Finally, NASD Regulation proposes to amend NASD Rule 9610(a) to clarify that the NASD Rule 9600 ''Procedures for Exemptions'' series merely sets forth procedures for seeking exemptive relief and that the type of relief that may be requested, and the authority to grant it, is found in the rules listed in NASD Rule 9610(a).

III. Summary of Comments

The Commission received one comment letter regarding the proposed rule change.[10] NASD Regulation responded to this commenter in a letter dated April 9, 2001.[11]

The Ad Hoc Committee opposed the proposal. Specifically, the Ad Hoc Committee asserted that certain limited function broker-dealers, including broker-dealers that the Ad Hoc Committee identified as ''private placement and mutual fund firms'' do not required a registered FINOP. In addition, the Ad Hoc Committee maintained that the proposal would place new limited function broker-dealers at a competitive disadvantage to established NASD members operating under a FINOP waiver. The Ad Hoc Committee also suggested that some managerial employees of limited function broker-dealers might lack expertise in financial and operational matters, even after passing the requisite examinations, and that the outsourcing of such functions was appropriate for these broker-dealers.[12]

In its response, NASD Regulation asserted that compliance with net capital and other financial operational rules is not dependent on the size of a firm's business. NASD Regulation also stated that it did not believe that new firms which will be required to employ a registered FINOP will be at a competitive disadvantage because they will continue to be able to employ FINOPs on a part-time or outsourced basis, although the proposed changes will require such personnel to register as FINOPs. Finally, in response to the Ad Hoc Committee's concerns about the qualifications of some employees of broker-dealers to function as FINOPs, NASD Regulation asserted that any person who passes the Series 27 or 28 is qualified to act as a FINOP or Introducing FINOP, respectively.[13]

IV. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulation thereunder applicable to a national securities association.[14] The Commission finds that the proposal is consistent with the requirements of Section 15A(b)(6) of the Act,[15] which requires that 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 mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

As discussed more fully above, NASD Regulation proposes to amend NASD Rules 1022(b) and (c) to provide that every broker or dealer operating pursuant to the provisions of Exchange Act Rule 15c3–1(a)(1)(ii), (a)(2)(i), or (a)(8)[16] must have at least one FINOP, and that all other brokers or dealers subject to the requirements of Exchange Act Rule 15c3–1 must have at least one Introducing FINOP. FINOPs and Introducing FINOPS must be registered with the NASD. NASD Regulation also

[5] 17 CFR 240.15c3–1.

[6] 17 CFR 240.15c3–1(a)(1)(ii) and (a)(2)(i).

[7] 17 CFR 240.15c3–1(a)(8).

[8] Only individuals who qualified as ''Financial Principals'' before the establishment of the Series 27 examination were grandfathered as FINOPs and were not required to take either of the examinations.

[9] Telephone conversation between Shirley Weiss, Attorney, NASD Regulation, and Andrew Shipe, Attorney, Division of Market Regulation, SEC, on January 11, 2001.

[10] *See* Ad Hoc Committee Letter, *supra,* note 4. According to the Ad Hoc Committee Letter, the Ad Hoc Committee, whose members perform financial and operational services for NASD members, was formed solely to respond to the NASD's proposal. The organization comprising the Ad Hoc Committee are: Buchanan Associates, Cogent Management, Inc., Integrated Management Solutions, JRS Financial Services, LLC, Hagan and Burns, CPAs, and MGL Consulting Corporation.

[11] *See* Letter to England, Assistant Director, Division of Market Regulation, SEC, from Shirley Weiss, Associated General Counsel, NASD Regulation (''NASD Regulation Letter'').

[12] *See* Ad Hoc Committee Letter, *supra,* note. 4.

[13] *See* NASD Regulation Letter, *supra,* note 11.

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

[15] 15 U.S.C. 78o(b)(6).

[16] 17 CFR 240.15c3–1(a)(1)(ii), (a)(2)(i), and (a)(8).

proposes to eliminate the ability of members subject to Exchange Act Rule 15c3–1 to request an exemption from the requirements, and to strike NASD Rule 1022 from the list of rules in NASD Rule 9610(a) from which a member may seek exemptive relief. NASD members that are exempt from or otherwise not subject to Exchange Act Rule 15c3–1 would not be subject to the requirements of either NASD Rule 1022(b) or 1022(c) and thus no longer required to seek exemptive relief from them.

The Commission believes that the proposed changes are consistent with the Act and the rules and regulations thereunder. Specifically, the Commission believes that the proposal to identify the classes of brokers or dealers that are required to designate a FINOP or an Introducing FINOP will protect investors and the public interest by helping to ensure that the financial and operations personnel of broker-dealers subject to Exchange Act Rule 15c3–1 have the training and competence needed to ensure the member's compliance with applicable net capital, recordkeeping and other financial and operational rules.

With regard to the Ad Hoc Committee's contention that the proposal should not apply to certain limited function broker-dealers, the Commission agrees with NASD Regulation's assertion that compliance with the Commission's net capital and other financial and operational rules does not depend on the size of a broker-dealer's business.[17] As noted above, the Commission believes the proposal will help to ensure NASD members' compliance with applicable net capital, recordkeeping, and other financial and operational rules. In addition, the Commission does not believe that the proposal will create a significant competitive disadvantage for new limited function broker-dealers who will be required to register a FINOP or an Introducing FINOP. In this regard, the Commission notes that a limited function broker-dealer will be able to employ a FINOP or an introducing FINOP on a part-time basis.

The Commission finds that the proposed changes to NASD Rule 9610(a) are consistent with the Act because they clarify NASD Rule 9610(a). Specifically, the amendments to NASD Rule 9610(a) clarify that the Rule 9600 Series merely sets forth procedures for seeking exemptive relief, and that the type of relief that may be requested, and the authority to grant it, is found in the rules listed in NASD Rule 9610(a). In addition, the amendments to NASD Rule 9610(a) make NASD Rule 9610(a) consistent with NASD Rule 1022, as amended, by deleting NASD Rule 1022 from the list of rules from which a member may seek exemptive relief.

Finally, the Commission finds that the proposal to amend NASD Rule 1022(c)(3) by adding a reference to paragraph (b)(2) of NASD Rule 1022 is consistent with the Act because it will help to clarify the application of NASD Rule 1022(c)(3).

V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change (SR–NASD–00–77) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

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[17] *See* NASD Regulation Letter, *supra,* note 11.

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–44322; File No. SR–NSCC–00–09]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving a Proposed Rule Change Relating to Processing Certain Securities Undergoing Reorganization

May 18, 2001.

On July 12, 2000, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–NSCC–00–09) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on March 9, 2001.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

NSCC's rules permit NSCC to continue to process certain securities undergoing reorganization or issuing dividends and specify how NSCC shall handle those issues. However, not all types of reorganizations or dividends fit the procedures specifically set forth in the rules. Ordinarily, this would require that the affected security be exited from the applicable system. Exiting the affected security from the applicable system poses a burden on the financial investment community when the issue is widely traded.

The proposed rule change modifies NSCC's Rules and Procedures to give NSCC the flexibility to process in the continuous net settlement (''CNS''), balance order, or other related system, on an exception basis, securities that would not otherwise have been eligible for processing to the extent NSCC has the capability to do so. The proposed rule change provides that in such circumstance, NSCC would issue a notice to its members setting forth how NSCC would process the security.

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)(F).[3] Section 17A(b)(3)(F) requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes that NSCC's rule change meets this standard because the proposed rule change allows NSCC to process otherwise ineligible securities in NSCC's CNS system, balance order, or other related system, on an exception basis. By providing a means whereby these securities, which previously would not have been eligible for processing through NSCC, can be processed through and receive the benefits of NSCC's highly automated systems, the proposed rule change facilitates the prompt and accurate clearance and settlement of such securities transactions.

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(b)(3)(F) 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–00–09) be an hereby is approved.

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

[2] Securities Exchange Act Release No. 44032 (March 3, 2001), 66 FR 14237.

[3] 15 U.S.C. 78q–1(b)(3)(F).