the securities involved in the In-Kind Purchase will be valued in the same manner as they would be valued for purposes of computing the net asset values for the Affected Funds.

Applicants' Legal Analysis

1. Section 17(a) of the Act, in relevant part, prohibits an affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, from selling to or purchasing from such investment company any security or other property. Section 2(a)(3) of the Act defines an ''affiliated person'' of another person to include (a) any person that directly or indirectly owns, controls, or holds with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with the other person; and (d) if the other person is an investment company, any investment adviser of that company.

2. Applicants state that the Underlying Portfolios and the Affected Funds may be deemed to be affiliated persons under section 2(a)(3) because they may be deemed to be under the common control of Advisors. The Trust, by controlling the Underlying Portfolios by virtue of its ownership in the Program Series, would be an affiliated person of an affiliated person of TIAA–CREF Funds. In addition, applicants state that the Trust owns more than 5% of the outstanding voting securities of another series of TIAA–CREF Funds and therefore the Trust could be deemed to be an affiliated person of an affiliated person of the Affected Funds. Therefore, applicants state that the In-Kind Purchase may be prohibited by section 17(a).

3. Section 17(b) of the Act provides that the Commission may exempt a transaction from the provisions of section 17(a) if the evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

4. Applicants submit that the terms of the In-Kind Purchase satisfy the standards set forth in section 17(b). Applicants state that TIAA–CREF Fund's board of trustees, including a majority of the trustees who are not interested persons as defined in section 2(a)(19) of the Act, determined that the In-Kind Purchase would be in the best interests of each Affected Fund and would not dilute existing shareholder interests. Applicants also state that the In-Kind Purchase will comply with rule 17a–7(b) through (g) under the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–11616 Filed 5–8–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45868; File Nos. SR–DTC–2000–21, SR–OCC–2001–01, SR–NSCC–2001–13, SR–EMCC–2001–02, SR–GSCC–2001–12, and SR–MBSCC–2001–03]

Self-Regulatory Organizations; The Depository Trust Company, The Options Clearing Corporation, National Securities Clearing Corporation, Emerging Markets Clearing Corporation, Government Securities Clearing Corporation, and MBS Clearing Corporation; Order Granting Approval of Proposed Rule Changes Seeking Authority To Enter Into a Multilateral Cross-Guaranty Agreement

May 2, 2002.

I. Introduction

On December 14, 2000, February 20, 2001, June 26, 2001, June 27, 2001, September 21, 2001, and September 25, 2001, The Depository Trust Company (''DTC''), The Options Clearing Corporation (''OCC''), National Securities Clearing Corporation (''NSCC''), Emerging Markets Clearing Corporation (''EMCC''), Government Securities Clearing Corporation (''GSCC''), and MBS Clearing Corporation (''MBSCC'') (collectively referred to as the ''clearing agencies''), respectively, filed with the Securities and Exchange Commission (''Commission'') proposed rule changes (File Nos. SR–DTC–2000–21, SR–OCC–2001–01, SR–NSCC–2001–13, SR–EMCC–2001–02, SR–GSCC–2001–12, and SR–MBSCC–2001–03) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] The purpose of the proposed rule change was to enable the clearing agencies to enter into a multilateral cross-guaranty agreement (''Multilateral Agreement''). Notice of the proposals was published in the **Federal Register** on March 14, 2002.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule changes.

II. Description

The clearing agencies have filed these proposed rule changes in order that they may enter into a multilateral cross-guaranty agreement that will replace the existing bilateral cross-guaranty agreements that are in place today.[3] In general, each clearing agency that is a party to a bilateral agreement provides the other clearing agency with a limited guaranty of the obligations of any entity that is a member of both clearing agencies. This means that if a common member fails and if one clearing agency winds up its business with the common member with assets of the common member in excess of the clearing member's liabilities to the clearing agency and the other clearing agency winds up its business with the common member with liabilities of the clearing member in excess of the clearing member's assets, (i) the clearing agency with the excess assets pays the clearing agency with the deficiency an amount equal to the lesser of the excess or the deficiency and (ii) the amount paid by the clearing agency with the excess assets to the clearing agency with the deficiency becomes an obligation of the common member to the clearing agency with the excess assets which the clearing agency with the excess assets may satisfy if necessary (thereby reimbursing itself for the amount paid to

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

[2] Securities Exchange Act Release No. 45524, (March 8, 2002), 67 FR 11521.

[3] At the present time, there are bilateral cross-guaranty agreements in effect between:

(1) DTC and NSCC (forming part of the DTC–NSCC Agreement that also provides for the netting of settlement payments and the collateralization of transactions processed through the facilities of DTC and NSCC), Securities Exchange Act Release Nos. 36867 (February 21, 1996) [File No. SR–DTC–96–06] and 36866 (February 21, 1996) [File No. SR–NSCC–96–03];

(2) MBSCC and Participants Trust Company, Securities Exchange Act Release No. 38604 (May 9, 1997) [File No. SR–PTC–97–01] (Participants Trust Company has been merged into DTC, Securities Exchange Act Release No. 40357 (August 24, 1998) [File Nos. SR–DTC–98–12, SR–PTC–98–02]);

(3) NSCC and each of MBSCC, GSCC and International Securities Clearing Corporation (''ISCC''), (ISCC has ceased operations and is no longer a registered clearing agency), Securities Exchange Act Release Nos. 37616 (August 28, 1996) [File Nos. SR–MBSCC–96–02, SR–GSCC–96–03 and SR–ISCC–96–04] and 39020 (September 4, 1997) [File No. SR–NSCC–97–11];

(4) NSCC and OCC, Securities Exchange Act Release No. 39022 (September 4, 1997) [File Nos. SR–OCC–97–17 and SR–NSCC–97–12]; and

(5) EMCC and each of NSCC, GSCC, and ISCC, Securities Exchange Act Release Nos. 42180 (November 29, 1999) [File No. SR–EMCC–99–7] and 37616 (August 28, 1996) [File Nos. SR–MBSCC–96–02, SR–GSCC–96–03, and SR–ISCC–96–04].

the clearing agency with the deficiency) from the assets of the common member. In this way, through the mechanism of a limited cross-guaranty and a compensating reimbursement obligation, the assets of a common member at one clearing agency in excess of its liabilities to that clearing agency may be made available to satisfy the liabilities of the common member to another clearing agency where the clearing member has a deficiency of assets to satisfy its liabilities.

Background

The Multilateral Agreement is similar in purpose to the bilateral agreements but differs in that (i) all of the parties to the several bilateral agreements will be parties to the Multilateral Agreement, (ii) all of the transactions of common members with any of the clearing corporations will be subject to the limited cross-guaranties of the Multilateral Agreement, (iii) all of the assets of common members with any of the parties to the Multilateral Agreement will be subject to application pursuant to the provisions of the Multilateral Agreement, (iv) all of the parties to the Multilateral Agreement will rank *pari passu* in terms of the payment of their respective guaranty obligations and entitlements, and (v) all such guaranty obligations and entitlements will be (A) calculated by DTC (based on information provided by the clearing agencies) pursuant to a formula set forth in the Multilateral Agreement and (B) settled through the facilities of DTC upon instructions from the clearing agencies required to make guaranty payments.

Set forth below is a description of the material terms and conditions of the Multilateral Agreement:

If a clearing agency that is a party to the Multilateral Agreement ceases to act for or suspends a person (''ceases to act'') and if that person is a member or participant of two or more clearing agencies (''common member''), such clearing agency (''participating clearing agency'') must give each other clearing agency a notice (''default notice'') that it has ceased to act for such common member (hereinafter referred to as the ''defaulting member''). Each other clearing agency that also ceases to act for the defaulting member within a period of ten business days after the default notice is given (also a ''participating clearing agency'') will have fifteen business days to deliver to each other participating clearing agency an information statement that sets forth the positive or negative sum derived (after application of any applicable liquidation procedures) from adding the amounts (specified in the Multilateral Agreement) owed by the participating clearing agency to the defaulting member as of the close of business on the day on which such participating clearing agency ceased to act for such defaulting member and subtracting the amounts (specified in the Multilateral Agreement) owed by the defaulting member to the participating clearing agency as of the close of business on such date. The resulting amount is the ''available net resources'' of such participating clearing agency with respect to such defaulting member.

Each participating clearing agency with positive available net resources (''payor clearing agency'') will have an obligation to make a payment (''guaranty obligation'') to each participating clearing agency with negative available net resources, and each participating clearing agency with negative available net resources (''payee clearing agency'') will have an entitlement to receive a payment (''guaranty entitlement'') from each participating clearing agency with positive available net resources. The amount of the guaranty obligation or guaranty entitlement will be determined by a formula set forth in the Multilateral Agreement which (i) limits the aggregate guaranty obligation of any payor clearing agency to the amount of its positive available net resources and prorates the aggregate guaranty obligations of all payor clearing agencies (based on their available net resources) if all positive available net resources of all payor clearing agencies exceeds all negative available net resources of all payee clearing agencies and (ii) limits the aggregate guaranty entitlement of any payee clearing agency to the amount of its negative available net resources and prorates the aggregate guaranty entitlements of all payee clearing agencies (based on their available net resources) if the negative available net resources of all payee clearing agencies exceeds the positive available net resources of all payor clearing agencies.

Within two business days after the end of the period for submitting information statements with the available net resources of the participating clearing agencies, DTC, acting for the participating clearing agencies whether or not DTC is a participating clearing agency with respect to any particular claim under the Multilateral Agreement and using only the information on available net resources contained in the information statements, will calculate the guaranty obligations and the guaranty entitlements of the participating clearing agencies in accordance with the formula set forth in the Multilateral Agreement and will deliver a report thereon to the participating clearing agencies. Two business days after that, DTC, acting on appropriate payment instructions from the payor clearing agencies, will debit their settlement accounts at DTC the amounts of their guaranty obligations and will credit the settlement accounts of the payee clearing agencies at DTC the amounts of their guaranty entitlements. Such debits and credits then will be netted and settled with all other debits and credits to the settlement accounts of the participating clearing agencies. All of the clearing agencies are or will be prior to the execution of the Multilateral Agreement participants of DTC.

It is important to note that a clearing agency cannot assert a claim and cannot be obligated to make or be entitled to receive a payment unless it ceases to act for a defaulting member. Each clearing agency will determine on the basis of its own rules whether or not to cease to act for a defaulting member. Generally, a clearing agency may cease to act for a defaulting member to protect the interests of the clearing agency, its other members or participants, and the national system for the clearance and settlement of securities transactions if, among other things, the defaulting member (a) has failed to pay a settlement debit, (b) has failed to pay or perform any other obligation to the clearing agency, or (c) has become the subject of an insolvency proceeding or has become a ''failed member'' within the meaning of the Federal Deposit Insurance Corporation Improvement Act of 1991 (*e.g.* it ceases to meet its obligations when due even if it has not become the subject of a formal insolvency proceeding). Ceasing to act for a member or participant is a serious measure which clearing agencies do not take lightly or do for minor defaults. Accordingly, by requiring that a clearing agency cease to act for a defaulting member before the procedures of the Multilateral Agreement can be implemented, the Multilateral Agreement ensures that the payment obligations of payor clearing agencies and the reimbursement obligations of defaulting participants to payor clearing agencies will not be triggered by minor defaults which do not pose a threat to the interests of the clearing agencies, their members or participants, or to the national system for the clearance and settlement of securities transactions.

The Multilateral Agreement also provides for subsequent adjustments in guaranty obligations and guaranty entitlements among participating clearing agencies if information is

discovered which, if known at the time of the initial calculation, would have changed the amounts of such guaranty obligations and guaranty entitlements, subject to certain conditions and limitations as described below. If at any time within four years after any payment is made with respect to of a guaranty obligation any participating clearing agency has any information that could result in a change in the calculation of such payment, such participating clearing agency must give each other participating clearing agency an adjustment notice. Within a period of ten business days after the adjustment notice is given, each participating clearing agency must deliver to each other participating clearing agency (and to DTC if DTC is not a participating clearing agency with respect to such default) a supplemental information statement which sets forth (i) the amount of the available net resources of such participating clearing agency with respect to the defaulting member as of the close of business on the day on which such participating clearing agency ceased to act for such defaulting member but taking into account the effect, if any, of the information in the adjustment notice and (ii) the amount of its available net resources, if any, as of the close of business on the day it received the adjustment notice.

Within two business days after the end of the period for submitting supplemental information statements with the available net resources of the participating clearing agencies, DTC, acting for the participating clearing agencies whether or not DTC is a participating clearing agency with respect to such default and using only the information on available net resources contained in the supplemental information statements, will recalculate the guaranty obligations and guaranty entitlements of the participating clearing agencies in accordance with the same formula originally used to calculate the guaranty obligations and guaranty entitlements of the participating clearing agencies and will deliver a report thereon to the participating clearing agencies. However, no participating clearing agency that is required to make a payment as a result of any recalculation of guaranty obligations and guaranty entitlements with respect to a prior default will be required to make any payment in excess of the positive amount of its available net resources on the date it received the adjustment notice plus any cash payments it previously received or minus any cash payments it previously paid pursuant to the terms of the Multilateral Agreement with respect to the same default. Two business days after that, DTC, acting on appropriate instructions from the participating clearing agencies required to make adjustment payments or entitled to receive adjustment payments as a result of the recalculation of the guaranty obligations and guaranty entitlements, will debit and credit the appropriate settlement accounts. Such debits and credits will then be netted and settled with all other debits and credits to the settlement accounts of the participating clearing agencies on the day of settlement.

As the foregoing description of the process for determining and satisfying a claim under the Multilateral Agreement indicates, no clearing agency would ever be required under the Multilateral Agreement to deliver assets or the proceeds of assets of a defaulting member to another clearing agency except for assets or the proceeds thereof in excess of the obligations and liabilities of the defaulting member to the first clearing agency and then only up to the amount needed to discharge the liabilities and obligations of the defaulting member to the second clearing agency. Also, as the foregoing description of the process for adjusting guaranty obligations and guaranty entitlements under the Multilateral Agreement indicates, a clearing agency will never be required to use its own assets to pay the claim of any other clearing agency against a defaulting member. Only the available net assets of the defaulting member will ever be used for this purpose.

Pursuant to the Multilateral Agreement, a clearing agency may be entitled to receive a guaranty payment from one or more other clearing agencies with respect to the obligations of a defaulting member. However, if a clearing agency receives a guaranty payment pursuant to the Multilateral Agreement, it will have a contingent obligation to refund some or all of such guaranty payment under two circumstances (each referred to as a ''clawback''):

(i) A repayment as a result of a recalculation of the guaranty obligations and guaranty entitlements of participating clearing agencies, which, as described above, could take place at any time up to four years after the guaranty payment is received; or

(ii) A payment or repayment as a result of a judicial determination that the defaulting member did not owe a participating clearing agency some or all of the amount of the charge covered by the guaranty payment, which, as explained below, could take place at any time up to six years after such charge.

The Multilateral Agreement provides that if a court of competent jurisdiction determines that some or all of the amount paid by a payor clearing agency to a payee clearing agency was not owed by the defaulting member to the payee clearing agency, (i) the payee clearing agency will repay such amount (which may be some or all of the guaranty payment it received from the payor clearing agency) to the payor clearing agency or (ii) the payee clearing agency shall pay such amount to the defaulting member or its legal representative (*e.g.*, a trustee or receiver) if so ordered by a court.

There is no time limit expressed in the Multilateral Agreement within which a payee clearing agency can be required to make a court-ordered repayment to the payor clearing agency or payment to the defaulting member or its legal representative because the parties to the Multilateral Agreement cannot by contract among themselves bind any court or any third party seeking relief in any court to any such time limit. Accordingly, the time within which a payee clearing agency could be required to make such payment or repayment would be the time within which a third party may bring a claim for such relief (*i.e.*, the statutory limitations period applicable to such claim). Although it is difficult to predict how a claim that the payee clearing agency improperly charged the defaulting member and thereby received a guaranty payment from a payor clearing agency for an amount that the defaulting member did not in fact owe to the payee clearing agency would be framed, it is probable that it would be framed as a claim in contract (*i.e.*, that the charge was not a proper charge under the rules of the payee clearing agency). Under the rules of each clearing agency, such rules constitute a contract between such clearing agency and its members or participants and are binding on all parties. In New York, which is the most likely venue of any proceeding and the law that would most likely govern any claim, the statutory limitations period applicable to a claim on contract is generally six years from the time of the breach.

Although, as just discussed, a clawback could occur up to four or six years after a payee clearing agency receives a payment, as a practical matter, it is extremely unlikely that it would take (i) four years for participating clearing agencies to make all necessary adjustments in the calculation of guaranty obligations and guaranty entitlements under the

Multilateral Agreement or (ii) six years for a defaulting member or its legal representative to assert a claim against a payee clearing agency that an amount was improperly charged against such defaulting member. Nevertheless, GSCC and MBSCC are amending their rules to better enable them to deal with a clawback should one ever arise. The following is a summary of the GSCC and MBSCC amendments.

GSCC

GSCC is amending its rules to provide it with two options in dealing with a clawback:

Option 1

GSCC has the option to apply any guaranty payment that it receives pursuant to the Multilateral Agreement upon receipt. If GSCC chooses this option:

a. The members that would have been assessed in the absence of the guaranty payment will be required to reimburse GSCC for any amount subject to a clawback pro rata based on the benefits they received (in terms of the reduction or elimination of assessments made or that otherwise would be made against them) from such guaranty payment;

b. The obligations of the members referred to in (a) above will be secured by requiring that such members must make and maintain additional deposits to the clearing fund in amounts equal to the benefits they received (in terms of the reduction or elimination of assessments made or that would have been made against them) from the guaranty payment;

c. To deal with the possibility that a shortfall may occur in the situation where the additional clearing fund deposit of a particular member referred to in (a) above is no longer available at the time a clawback occurs (because, for example, that member became insolvent and its entire clearing fund deposit was used to cover losses incurred by GSCC), GSCC may treat such shortfall as an ''other loss'' pursuant to GSCC Rule 4, Section 8(g); and

d. To deal with the fact that at least theoretically a clawback may not occur until four years (in the case of a recalculation of guaranty obligations and guaranty entitlements) or six years (in the case of a court determination of an improper charge) after receipt of a guaranty payment, the additional deposits made pursuant to (b) or (c) above by the members that would have been assessed must be retained by GSCC until GSCC is satisfied that (i) GSCC is no longer subject to a clawback under the Multilateral Agreement and (ii) the members are therefore no longer subject to a corresponding obligation to reimburse GSCC for the amount of any such clawback; and

e. GSCC has the right (i) to waive the obligation of the members to make and maintain additional deposits to the clearing fund to secure an obligation on their part to reimburse GSCC for the amount of any clawback and/or (ii) to pay the clawback from the resources of GSCC without recourse to any member or their deposits to the clearing fund.

Option 2

GSCC has the option to retain the guaranty payment and not apply it to its losses and/or liabilities arising from the default of the member until after the end of the clawback period. If GSCC chooses this option:

a. The members would be assessed pursuant to GSCC's loss sharing rule and

b. At the end of the clawback period, GSCC would distribute the guaranty payment to the members who were assessed (whether or not they are still members at the time of such distribution) pro rata the amounts of such assessments.

Given that similar repayment issues are presented by GSCC's cross-margining arrangements, GSCC is making comparable changes in its rules with respect to the repayment of cross-margining payments.

MBSCC

To deal with clawbacks, MBSCC is amending its rules as follows:

a. Upon receipt of a guaranty payment, MBSCC will reduce or eliminate by an equivalent amount the assessments made or that otherwise would be made against the original contra-side participants pro rata as now provided in Rule 4 of Article III of its rules;

b. The original contra-side participants will be required to reimburse MBSCC for any amount subject to a clawback pro rata the benefits they received (in terms of the reduction or elimination of assessments made or that otherwise would be made against them) from the guaranty payment;

c. MBSCC will secure the obligations of the original contra-side participants referred to above by requiring that such original contra-side participants must make and maintain additional deposits to the participants fund in amounts equal to the benefits they received (in terms of the reduction or elimination of assessments made or that otherwise would be made against them) from the guaranty payment;

d. To deal with the possibility that the participants fund deposit of a particular original contra-side participant referred to in (3) above may no longer be available at the time the clawback occurs (because, for example, that participant became insolvent and its entire participant fund deposit was used to cover losses incurred by MBSCC), the remaining original contra-side participants referred to in (3) above would be required to replenish the deficiency by making additional deposits to the participants fund pro rata their additional deposits to the participants fund pursuant to (3) above;

e. To deal with the fact that at least theoretically a clawback may not occur until four years (in the case of a recalculation of guaranty obligations and guaranty entitlements) to six years (in the case of a court determination of an improper charge) after receipt of a guaranty payment, the additional deposits made, pursuant to (3) or (4) above, by original contra-side participants must be retained by MBSCC until MBSCC is satisfied that (i) MBSCC is no longer subject to a clawback under the Multilateral Agreement and (ii) the original contra-side participants are therefore no longer subject to a corresponding obligation to reimburse MBSCC the amount of any such clawback; and

f. MBSCC has the right to (i) waive the obligation of the original contra-side participants to make and maintain additional deposits to the participants fund to secure an obligation on their part to reimburse MBSCC for the amount of any clawback and/or (ii) to pay any clawback from the resources of MBSCC without recourse to any original contra-side participants or their deposits to the participants fund.

Any clearing agency other than DTC may withdraw from the Multilateral Agreement with ten days advance written notice. Any clearing agency which resigns as a participant of DTC will also cease to be a party to the Multilateral Agreement effective upon such resignation. However, any such withdrawal or resignation will not effect the obligations of a withdrawing or resigning clearing agency with respect to a claim for which a default notice was delivered prior to such withdrawal or resignation and any such termination does not affect the obligations of any clearing agency with respect to a claim for which a default notice was delivered prior to such termination. DTC may terminate the Multilateral Agreement entirely with advance written notice of one year.

In conjunction with entering into the Multilateral Agreement, NSCC, EMCC,

GSCC, MBSCC, and OCC will terminate their current bilateral agreements so that there will be no issues of conflict or of priority with the limited cross-guaranty provisions of the Multilateral Agreement. DTC and NSCC will enter into a Seconded Amended and Restated Netting Contract and Limited Cross-Guaranty Agreement (''New DTC–NSCC Agreement''). The New DTC–NSCC Agreement will modify and supercede the current Amended and Restated Netting Contract and Limited Cross-Guaranty Agreement dated February 21, 1996, between DTC and NSCC (''Old DTC–NSCC Agreement'').[4] The New DTC–NSCC Agreement will delete the limited net resources cross-guaranty provisions of the Old DTC–NSCC Agreement so that the limited net resources cross-guaranty provisions of the Multilateral Agreement will be the only such provisions of this type between DTC and NSCC and among DTC, NSCC and the other parties to the Multilateral Agreement.

III. Discussion

Section 17A(b)(3)(F) 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 or for which it is responsible and to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.[5] For the reasons set forth below, the Commission finds that the proposed rule changes are consistent with these obligations.

The Commission has encouraged the use of cross-guaranty agreements and has previously granted approval to several bilateral cross-guaranty agreements.[6] The Commission believes that by entering into the Multilateral Agreement, the clearing agencies will be improving their cross-guaranty system and their ability to assure the safeguarding of securities and funds in their custody or control. By providing for a mechanism for the use of a defaulting member's assets on deposit at any one of the clearing agencies which is a party to the Multilateral Agreement to reduce or eliminate the defaulting member's obligations at any clearing agency which is a party to the Multilateral Agreement, the Multilateral Agreement should reduce the risk of losses to the clearing agencies due to a member's default.

The Commission also finds that the Multilateral Agreement is consistent with the clearing agencies' obligations to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and in particular 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 changes (File Nos. SR–DTC–2000–21, SR–OCC–2001–01, SR–NSCC–2001–13, SR–EMCC–2001–02, SR–GSCC–2001–12, and SR–MBSCC–2001–03) be and hereby are approved.

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

Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–11617 Filed 5–8–02; 8:45 am]

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[4] Securities and Exchange Act Release Nos. 36867 (February 27, 1996), 61 FR 7288 [File No. SR–DTC–96–06] and 36866 (February 27, 1996), 61 FR 7288 [File No. SR–NSCC–96–03]) orders amending rules and cross-guaranty agreement to accommodate same-day funds settlement.)

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] *Supra* note 3.

[7] 17 CFR 200.30–3(a)(12)

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45869; File No. SR–NYSE–2002–06]

Self Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto Amending Exchange Rule 351 Concerning the Reporting of Criminal Offenses by Members and Member Organizations to the Exchange

May 3, 2002.

On January 9, 2002, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''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 NYSE Rule 351 in order to narrow the scope of criminal offenses that must be reported by members and member organizations to incidents that are more germane to the conduct of a securities related business.

The proposed rule change was published for comment in the **Federal Register** on February 12, 2002.[3] The Commission received one comment letter on the proposal,[4] which supports the proposed rule change. On April 30, 2002, the Exchange filed Amendment No. 1 to the proposed rule change with the Commission.[5]

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[6] and, in particular, the requirements of section 6 of the Act[7] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 6(b)(5) of the Act[8] because narrowing the scope of criminal offenses that members and member organizations would be required to report to the Exchange is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling and facilitating transactions in securities. In particular, limiting the proposed misdemeanors that must be reported should minimize the number of immaterial filings and maximize the effective use of resources committed to fulfilling self-regulatory responsibilities at the Exchange. Moreover, the proposed rule change would continue to capture the reporting of arrests for which any subsequent conviction would subject the individual to a statutory disqualification under Section 3(a)(39) of the Act.[9]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[10], that the proposed rule change and Amendment

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 45404 (February 6, 2002), 67 FR 6565.

[4] *See* letter to Margaret H. McFarland, Deputy Secretary, Commission, from Selwyn J. Notelovitz, Senior Vice President, Global Compliance, Charles Schwab & Co., Inc., dated March 5, 2002 (''Schwab Letter'').

[5] *See* letter to Katherine England, Assistant Director, Division of Market Regulation, Commission, from Susan Light, Vice President, Enforcement, NYSE, dated April 29, 2002 (''Amendment No. 1''). In Amendment No. 1, the Exchange amended the proposed rule change to require that an arrest, arraignment, or conviction before a *military* court of any of the enumerated crimes be reported to the Exchange. In addition, the Exchange added the conspiracy to commit any one of the enumerated misdemeanors under Exchange Rule 351 to the list of crimes that must be reported to the Exchange. This is a technical amendment and is not subject to notice and comment.

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

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78c(a)(39).

[10] 15 U.S.C. 78s(b)(2).