

were necessary and appropriate in connection with fair and orderly markets.<sup>13</sup> The Commission also asked, among other things, that the Exchange provide information regarding the Exchange's monitoring of liquidation transactions effected by specialists on any destabilizing tick. In both of the 1995 approval orders, the Commission requested that the Amex continue to monitor the pilot and update its report where appropriate.<sup>14</sup> In particular, the Commission asked the Amex to report any noncompliance with the Rule and the action the Amex took as a result of such noncompliance.

The Amex submitted its reports concerning the pilot program to the Commission in May 1995 and April 1996. As noted above, the Amex believes the pilot procedures appear to be working well in enabling specialists to reliquidate appropriately to meet the needs of the market. After reviewing the date, the Commission agrees with the Exchange that the pilot program generally is working well. In particular, the Commission believes the report indicates that specialists generally are entering the aftermarket after effecting liquidating transactions when appropriate.

Nevertheless, the Commission believes certain issues concerning the pilot program need to be revisited before permanent approval can be granted. In this regard, the Exchange should continue to emphasize the requirements of Amex Rule 170, including the necessity for Floor Official approval of specialists' purchases and sales on direct plus or minus ticks and that such transactions can only be effected if reasonably necessary for the maintenance of fair and orderly markets. In addition, where proper procedures are not followed, the Amex should take appropriate disciplinary action.<sup>15</sup> Finally, the Amex should prepare an additional report as described above and submit the data to the Commission for its consideration of whether the pilot program should be granted permanent approval.<sup>16</sup>

<sup>13</sup> See 1994 Approval Order, *supra* note 12.

<sup>14</sup> See April 1995 Approval Order and July 1995 Approval Order, *supra* note 12.

<sup>15</sup> All technical violations of this rule (e.g., failure to obtain the required Floor Official approval when such approval, if sought, would have been granted) should be referred to the Minor Floor Violation Disciplinary Committee, as required by Amex Rule 590. Also, as the Amex has indicated previously, all substantive violations of this rule (e.g., failure to properly reenter the market or failure to obtain the required Floor Official approval when such approval, if sought, would not have been granted) will be dealt with according to the Exchange's formal disciplinary procedures.

<sup>16</sup> The Commission request that this report be submitted by January 7, 1997, along with any

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 thereof. This will permit the pilot program to continue on an uninterrupted basis. In addition, the Exchange proposes to continue using the identical procedures contained in the pilot program. These procedures have been published in the Federal Register on several occasions for the full comment period,<sup>17</sup> and no comments have been received. Furthermore, the Commission approve a similar rule change for the NYSE also without receiving comments on the proposal.<sup>18</sup> For these reasons, the Commission finds that accelerating approval of the proposed rule change is consistent with Section 19(b)(2) of the Act.<sup>19</sup> Any requests to modify this pilot program, to extend its effectiveness, or to seek permanent approval for the pilot program also should include an update on the disciplinary actions taken for violations of these procedures.

#### V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>20</sup> that the proposed rule change (SR-Amex-96-42), as amended, is approved for a pilot period ending on February 14, 1997.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.<sup>21</sup>

Margaret H. McFarland,

*Deputy Secretary.*

[FR Doc. 96-29933 Filed 11-21-96; 8:45 am]

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[Release No. 34-37959; File No. SR-NSCC-96-16]

November 15, 1996.

#### Self-Regulatory Organizations; National Securities Clearing Corporation; Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Fund/Serv Service

On August 15, 1996, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission")

requests for extension or permanent approval of the pilot.

<sup>17</sup> See 1994 Approval Order, *supra* note 12; April 1995 Approval Order, *supra* note 12; July 1995 Approval Order, *supra* note 12; July 1996 Approval Order, *supra* note 12; September 1996 Approval Order *supra* note 5.

<sup>18</sup> See Securities Exchange Act Release No. 31797 (Jan 29, 1993), 58 FR 7277 (approving File No. SR-NYSE-92-20).

<sup>19</sup> 15 U.S.C. 78s(b)(2).

<sup>20</sup> *Id.*

<sup>21</sup> 17 CFR 200.30-3(a)(12).

a proposed rule change (File No. SR-NSCC-96-16) under Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> seeking to allow members to transfer assets within an individual retirement account ("IRA") to another mutual fund through NSCC's Fund/Serv.<sup>2</sup> On September 10, 1996, and on September 30, 1996, NSCC filed amendments to the proposed rule change.<sup>3</sup> Notice of the proposal was published in the Federal Register on October 24, 1996.<sup>4</sup> The Commission received one comment letter in response to the filing.<sup>5</sup> On November 13, 1996, NSCC filed a third amendment to the proposed rule change.<sup>6</sup> For the reasons discussed below, the Commission is approving the proposed rule change on an accelerated basis.

#### I. Description

The proposed rule change will enable NSCC settling members and fund members to transfer between each other the value of mutual fund shares held in IRAs on an automated basis.<sup>7</sup> Pursuant to this rule change, the member to whom the value of IRA mutual funds shares is to be transferred ("Receiving Fund Member") will initiate a transfer by submitting a transfer request to NSCC indicating the member from whom the value of IRA mutual fund shares is to be transferred ("Delivering Fund Member"). The transfer request should contain the CUSIP number, the customer Tax I.D. number, the customer account number, the customer account registration, and the plan type (e.g., IRA, IRA rollover, or Simplified Employee Pension IRA) as established at the Receiving Fund Member.

Upon receipt of the information from NSCC, the Delivering Fund Member

<sup>1</sup> 15 U.S.C. § 78(b)(1) (1988).

<sup>2</sup> Fund/Serv, which is part of NSCC's Mutual Fund Services, is an NSCC service that permits NSCC members to process and to settle on an automated basis mutual fund purchase and redemption orders and to transmit registration instructions.

<sup>3</sup> Letters from Anthony H. Davidson, Associate Counsel, NSCC, to Christine Sibille, Special Counsel, Division of Market Regulation, Commission (September 6, 1996, and September 27, 1996).

<sup>4</sup> Securities Exchange Act Release No. 37841 (October 18, 1996), 61 FR 55178.

<sup>5</sup> Letter from Donald J. Boteler, Vice President, Operations and Training, Investment Company Institute, to Jonathan G. Katz, Secretary, Commission (November 1, 1996).

<sup>6</sup> Letter from Anthony H. Davidson, Associate Counsel, NSCC, to Christine Sibille, Special Counsel, Division of Market Regulation, Commission (November 8, 1996). This amendment was a technical amendment that did not require republication of notice.

<sup>7</sup> Currently, the mutual fund industry relies on telephonic and paper communications to process these transfers.

must either acknowledge or reject the transfer within two days. An acknowledgment must contain the customer account information as the information appears on the records of the Delivering Fund Member. The acknowledgment must also contain the customer's current dollar and share balance at the time of the acknowledgment. A rejection must indicate the reason(s) (e.g., stop code on account, invalid plan type, or invalid percentage rate) why the Delivering Fund Member is rejecting the transfer request. A transfer request that is not responded to within two days by a Delivering Fund Member will be deleted from Fund/Serv.

In order for a transfer to be scheduled for settlement after a transfer request has been acknowledged, the Delivering Fund Member must submit a confirmation to NSCC no earlier than two days and no later than sixty days after the submission of the acknowledgment. Such confirmation will provide information on the price at which the position is liquidated. An acknowledged transfer request that is not confirmed by a Delivering Fund Member within sixty days from the submission of the acknowledgment will be deleted from Fund/Serv. If a Delivering Fund Member wants to change any information contained in the confirmation it will be permitted to submit a reconfirmation prior to 11 a.m. on the day of settlement. Similarly, a Receiving Fund Member may cancel a transfer request by submitting an exit instruction to NSCC prior to 11 a.m. on the day of settlement.

A transfer request that has been confirmed or reconfirmed and not exited will settle on the next settlement cycle after such confirmation or reconfirmation.<sup>8</sup> On the settlement date, NSCC will debit the Delivering Fund Member's account and credit the Receiving Fund Member's account for the dollar value of the liquidated mutual fund shares.

Members may also need to make adjustments after the transfer to account for items such as dividend and commission payments. A member may make such adjustments with another member in the same fashion as with other Fund/Serv orders. NSCC will charge members the same fee for these transfer requests as it charges for other Fund/Serv orders.<sup>9</sup>

<sup>8</sup> The settlement cycle occurs at 11:00 a.m. each business day.

<sup>9</sup> The proposed rule change modifies Addendum A of NSCC's rules to reflect a fee of \$.35 per side per transfer request.

## II. Comment Letter

The Commission received one comment letter in response to the proposed rule change.<sup>10</sup> The commenter believes that the proposal provides for a timelier and more efficient processing of IRA account transfers through the exchange of electronic records. The commenter notes that such electronic transfers should result in a streamlined processing cycle during which customer proceeds should be uninvested for a maximum of one night. The commenter compares this electronic efficiency with the current, cumbersome manual transfer procedure which is subject to varied, idiosyncratic processing requirements and practices as well as a reliance on the U.S. Postal Service. The commenter believes that the movement of this transfer process to a paperless, automated system can only improve the timeliness and accuracy of IRA account transfers.

## III. Discussion

The Commission believes that NSCC's proposal is consistent with Section 17A of the Act<sup>11</sup> and specifically with Sections 17A(b)(3) (A) and (F) thereunder<sup>12</sup> Sections 17A(b)(3) (A) and (F) require that a clearing agency be organized and its rules be designed to facilitate and to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in the custody or control of NSCC or for which it is responsible.

Under NSCC's proposed rule change, an electronic transfer of the value of mutual fund shares held in IRAs can be used in place of a manual transfer.<sup>13</sup> The proposal should help alleviate the inefficiencies associated with the physical exchange of hardcopy documentation and should make account transfers more efficient and expeditious. By processing the transfers of IRAs in a more efficient manner, the proposal should promote the prompt and accurate clearance and settlement of securities transactions. Furthermore, the Commission believes that by requiring the Delivering Fund Member to

<sup>10</sup> *Supra* note 5.

<sup>11</sup> 15 U.S.C. § 78q-1 (1988).

<sup>12</sup> 15 U.S.C. §§ 78q-1(b)(3) (A) and (F) (1988).

<sup>13</sup> Currently, the transfer of an IRA account from one mutual fund company to another requires the exchange of hardcopy documentation. Specifically, the receiving fund mails the letter of acceptance to the delivering fund. If the delivering fund finds the letter of acceptance in good order, it sends the proceeds, typically via U.S. mail to the receiving fund. However, if the letter of acceptance is not in good order, the delivering fund sends a letter to the receiving fund with a description of the elements required to bring the letter of acceptance in accordance with good order standards.

acknowledge and to confirm the transfer request and by providing the Delivering Firm Member with the ability to edit information contained in the confirmation and the Receiving Fund Member with the ability to cancel a request, the proposal reduces the possibility of errors. This system provides more safeguards than the current system where the delivering firm delivers funds after the receipt of the transfer request. Thus, it is consistent with the goal of safeguarding securities and funds contained in Section 17A.

NSCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication because this will allow NSCC to begin implementing the Fund/Serv IRA transfer service in order that NSCC and its members can take advantage in a more timely fashion of the benefits of the service.

## IV. Conclusion

The Commission finds that NSCC's proposal is consistent with the requirements of the Act and particularly with Section 17A 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-96-16) be and hereby is approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>14</sup>

Margaret H. McFarland,  
Deputy Secretary.

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## SMALL BUSINESS ADMINISTRATION

[License No. 02/72-0570]

### Notice of Issuance of a Small Business Investment Company License; Penny Lane Partners, L.P.

On June 14, 1994, an application was filed by Penny Lane Partners, L.P., One Palmer Square—Suite 510, Princeton, New Jersey, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1996)) for a license to

<sup>14</sup> 17 CFR 200.30-3(a)(12) (1996).