

behalf of defined contribution plans as defined in Section 414(i) of the Internal Revenue Code of 1986, as amended;

(vii) It is an Investment Advisor as defined in Section 202(a)(ii) of the Investment Advisors Act of 1940, as amended;

(viii) If it does not qualify under paragraphs (i) through (vii) above, it has demonstrated to the Board of Directors that its business and capabilities are such that it could reasonably expect material benefit from direct access to NSCC's services.

Users of Rule 59 information that are not members or participants of NSCC in any other capacity would be bound by the terms and conditions of a standard NSCC contract applicable to such service, and the rules of NSCC would not apply to them. The contract would state that the user cannot hold itself out as a member of NSCC unless approved for NSCC membership under a different NSCC rule. Such contracts would also include terms regarding limitations of liability, standard of care, and indemnification substantially similar to those contained in NSCC's membership agreement and rules.

NSCC anticipates that the first such information service to be authorized under proposed Rule 59 would be a messaging system used by participants in the separately managed accounts industry.³ It is expected that the Separately Managed Account Service ("SMAS") would be used for the transmission of information between sponsors of separately managed account programs and the investment managers participating in their programs in order to coordinate information such as account opening data and verification of funding amounts.⁴ Currently, this information is generally communicated by a combination of methods such as multiple vendor platforms, faxes, emails, and telephone.

NSCC believes that the proposed rule change would facilitate the transmission of information for investment products in a standardized and automated format, using NSCC's connectivity. Standardization and automation of information on investment products can be expected to reduce processing errors that are typically associated with

manual processes or the use of multiple platforms and methods to transmit information. Accordingly, NSCC believes this filing is consistent with the requirements of the Act and the rules and regulations thereunder because it promotes the prompt and accurate clearance and settlement of securities and other related transactions.

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

NSCC does not believe that the proposed rule change would have an impact on or impose a burden on competition.

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

No written comments relating to the proposed rule change have been solicited or received. NSCC has, however, worked closely with the MMI regarding standardization of information for the separately managed accounts industry. NSCC will notify the Commission of any written comments received by NSCC.

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

Within thirty five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (a) By order approve the 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 20549-0609. Comments may also be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR-NSCC-2003-01. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently,

comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to the File No. SR-NSCC-2003-01 and should be submitted by May 8, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁵

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 03-9477 Filed 4-16-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47671; File No. SR-NYSE-2002-11]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change and Amendment No. 1 and Notice of Filing And Order Granting Accelerated Approval to Amendment No. 2 Thereto by the New York Stock Exchange, Inc. to Establish a Six-Month Pilot Program Permitting a Floor Broker to Use an Exchange Authorized and Issued Portable Telephone on the Exchange Floor

April 11, 2003.

On February 28, 2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC"), 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 implement a six-month pilot program that would amend NYSE Rule 36 (Communication Between Exchange and Members' Offices) to allow a Floor broker's use of an Exchange authorized and provided portable telephone on the Exchange Floor upon approval by the

³ Information about the separately managed account industry is available on the website of The Money Management Institute ("MMI"): <http://www.moneyinstitute.com>. The MMI is the national organization for the managed account industry, which is comprised principally of portfolio management firms and sponsors of investment programs.

⁴ NSCC will file a Section 19(b) proposed rule change with the Commission before implementing any new service, such as the separately managed account service, under Rule 59.

⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.