

Commission (*e.g.*, NSCC's Fund/SERV system).²⁶

Under the proposed rule, fund designated transfer agents would be required to record the date and time they receive order information.²⁷ These transfer agents and NSCC will operate, in effect, as time-stamping organizations, ensuring that orders are assigned the correct day's price.²⁸ We believe these organizations, which are regulated by the Commission²⁹ and operate large automated processing systems, will serve to ensure the integrity of fund pricing.³⁰

Are there other intermediaries that could also serve this role? Are there intermediaries that may become involved in processing order information in the foreseeable future that would be capable of serving this role? We recognize that this proposal will require fund transfer agents, NSCC, and other intermediaries to modify, and in some cases to expand, their data processing systems to reflect the rule proposals. If we adopt these proposals in similar form, we would expect to provide a one-year transition period to accommodate system changes. Would such a transition period be adequate? We also note that transfer agents currently are not required under Commission rules to time-stamp

information they record.³¹ Nevertheless, only a transfer agent that has the ability to time-stamp order information it receives and maintain a record of that information could be a "designated transfer agent" under the proposed amendments. Should our transfer agent rules include time-stamping and record retention requirements for designated transfer agents? If so, should any information in addition to the order information and date and time of receipt be included in the record? In what form and for how long should the record be maintained?

B. Purchase and Sale Orders; Exchanges

We propose to define the term "order" in the rule to clarify when an order is complete (and therefore has been received) for purposes of obtaining the appropriate day's price. Under the proposed amendments an "order" would mean the direction to purchase or sell either (i) a specific number of shares of a fund (*e.g.*, all the shares held in the account), or (ii) an indeterminate number of shares of a specific value (*e.g.*, \$10,000 of shares of the fund).³² The definition also would state that each order would be deemed irrevocable as of the next pricing time after receipt by the fund, its designated transfer agent, or registered clearing agency.³³ This provision is designed to prevent the cancellation or modification of orders after the pricing time applicable to the order.

Our proposed amendment also contains a special provision for exchange orders. An investor who exchanges between two funds actually engages in two transactions—a redemption of the securities he owns in one fund and a purchase (using the redemption proceeds) of securities in another fund. Typically, exchanges between funds in the same fund complex, and sometimes in different complexes, are processed as a single transaction so that they receive the same day's prices. In the case of an exchange involving a fixed number of shares (*e.g.*, in which the investor redeems all of his shares of the first fund), neither the amount nor the number of shares of the second fund will be known until the NAV of the first fund is determined, which will be sometime after 4 p.m. To preserve the ability of funds to offer "seamless" exchange transactions, we propose to define "order" to include a direction to purchase redeemable

securities of the fund using proceeds of a contemporaneous order to redeem a specific number of shares of another.

C. Exceptions

Rule 22c-1 contains several exceptions from the forward pricing requirements, all of which we would preserve.³⁴ We would add to those exceptions another exception that would permit investor orders to receive same-day treatment if, as a result of an emergency, a dealer (or its agent) was unable to transmit the orders, or NSCC or the fund's designated transfer agent was unable to receive the orders.³⁵ The exception would prevent investors from losing the current day's price for orders received by dealers before 4 p.m., if those orders could not be transmitted to or received by NSCC or the fund's designated transfer agent by 4 p.m. because of, for example, a power failure, hurricane or other emergency.³⁶

The emergency exception would be available to dealers only if the chief executive officer certifies to the fund (i) the nature, existence, and duration of the emergency, and (ii) that the intermediary received the orders before the applicable pricing time.³⁷ A fund also would be required to keep a record of each certification it received for six years.³⁸ If an emergency prevented the designated transfer agent or the clearing agency from receiving order information, the chief executive officer of the designated transfer agent or clearing agency would have to provide notice of the emergency to the fund.³⁹

The second exception addresses "conduit" funds, which invest all their

²⁶ See proposed rule 22c-1(a). The proposed amendments would retain the requirements in the current rule concerning the frequency and time of determining NAV, but would reorganize and reword those provisions. The proposed amendment would use the phrase "based on the current net asset value established as of the next pricing time" instead of the phrase "based on the current net asset value which is next computed." This amendment is intended to clarify the current requirement that orders received after the pricing time, but before calculation of the NAV is complete, do not receive same-day pricing.

²⁷ The proposed rule defines "designated transfer agent" to mean the single registered transfer agent, as defined in section 3(a)(25) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(25)], that is designated, in the fund's registration statement, and required by written contract to receive order information and maintain a record of the date and time it receives the order information. See proposed rule 22c-1(c)(1).

²⁸ Although orders would have to be received by Fund/SERV or the designated transfer agent by 4 p.m. to ensure same-day pricing, the clearing agency and designated transfer agent each may complete its processing after the pricing time.

²⁹ See *supra* notes 6, 11.

³⁰ Some groups have endorsed this approach. See Statement of Paul G. Haaga, Jr., Chairman, Investment Company Institute on "Mutual Funds: Who's Looking Out for Investors." Before the House Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises of the Committee on Financial Services, 108th Cong., 1st Sess. (Nov. 4, 2003) (available at http://www.ici.org/statements/tmny/03_house_haaga_tmny.html); Letter from David B. Yeske, President, The Financial Planning Association, to William H. Donaldson, Chairman, Securities and Exchange Commission (Nov. 7, 2003) (available in the public comment file).

³¹ The proposed amendments would not impose any new recordkeeping requirements on transfer agents in general.

³² See proposed rule 22c-1(c)(3).

³³ *Id.*

³⁴ The rule preserves three existing exceptions. The first permits sales of unit investment trust shares in the secondary market involving backward pricing under conditions that do not dilute existing shareholders' interest in the trust. See proposed rule 22c-1(b)(3). The second permits insurance company separate accounts to price initial purchase payments up to two days after receipt of a complete contract application and up to five days while obtaining additional information to complete the application. See proposed rule 22c-1(b)(4). The third permits a fund to adjust the price of its redeemable securities sold pursuant to a sale, merger, consolidation, or purchase of substantially all the assets of certain companies. See proposed rule 22c-1(b)(5).

³⁵ See proposed rule 22c-1(b)(1)(i).

³⁶ See, *e.g.*, Amendment to Pricing Rule and Adoption of Rule on Pricing of Redemptions, Investment Company Act Release No. 14559 (June 6, 1985) (distinguishing circumstances, such as a natural disaster or other external occurrence, that constitute an emergency for purposes of rule 22c-1, from other circumstances, such as internal operational difficulties, that do not).

³⁷ See proposed rule 22c-1(b)(1)(i)(A).

³⁸ The fund, or its designated agent, would be required to keep the records for six years, the first two years in an easily accessible location. See proposed rule 22c-1(b)(1)(ii).

³⁹ See proposed rule 22c-1(b)(1)(i)(B).